

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
ON BEHALF OF THE UNITED STATES)
ENVIRONMENTAL PROTECTION AGENCY,)
THE UNITED STATES DEPARTMENT OF)
THE INTERIOR, AND THE NATIONAL)
OCEANIC AND ATMOSPHERIC)
ADMINISTRATION;)
STATE OF WASHINGTON;)
PUYALLUP TRIBE OF INDIANS;)
MUCKLESHOOT INDIAN TRIBE;)

Plaintiffs,)

v.)

SIMPSON TACOMA KRAFT COMPANY,)
CHAMPION INTERNATIONAL CORPORATION,)
AND WASHINGTON STATE DEPARTMENT OF)
NATURAL RESOURCES,)

Defendants)

Civil No.

COMMENCEMENT BAY
NEARSHORE/TIDEFLATS
SUPERFUND SITE; ST. PAUL
WATERWAY PROBLEM AREA
CONSENT DECREE

1
2 TABLE OF CONTENTS

3 Page

4 I. Background.....4

5 II. Jurisdiction.....16

6 III. Parties Bound.....17

7 IV. Definitions.....17

8 V. General Provisions.....23

9 VI. Transfers of Interest or Property.....25

10 VII. Performance of the Work by Settling Defendants....27

11 VIII. Additional Work.....34

12 IX. Periodic Review to Ensure Protection of
13 Human Health and the Environment.....34

14 X. Quality Assurance.....35

15 XI. Site Access and Sampling.....36

16 XII. Reporting, Document Retention and Availability....39

17 XIII. Designation of Remedial Project Manager/On-Scene
Coordinator and Project Coordinator.....43

18 XIV. Force Majeure.....44

19 XV. Dispute Resolution.....46

20 XVI. Stipulated Penalties.....49

21 XVII. Reimbursement.....53

22 XVIII. Covenant Not to Sue.....56

23 XIX. Reservation of Rights.....60

24 XX. Covenant by Settling Defendants;
25 Assignment of Claims.....64

26 XXI. Effect of Settlement; Contribution Protection....64

27 XXII. Indemnification; Other Claims.....66

1	XXIII. Insurance/Financial Responsibility.....	68
2	XXIV. Endangerment.....	69
3	XXV. Notices.....	72
4	XXVI. Consistency with National Contingency Plan.....	75
5	XXVII. Compliance with Laws.....	75
6	XXVIII. Response Authority.....	75
7	XXIX. Modification.....	76
8	XXX. Lodging and Opportunity for Public Comment.....	77
9	XXXI. Community Relations.....	78
10	XXXII. Effective and Termination Dates.....	79
11	XXXIII. Retention of Jurisdiction.....	80
12	XXXIV. Signatories.....	81

13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 I. BACKGROUND

2 1. The United States of America ("United States"),
3 on behalf of the United States Environmental Protection Agency
4 ("EPA") and the federal Natural Resource Trustees (as defined in
5 paragraph 31(J)), and the other Natural Resource Trustees (also
6 defined in paragraph 31(J)) are filing Complaints in this matter,
7 concurrently with this Consent Decree, under Sections 106 and 107
8 of the Comprehensive Environmental Response, Compensation, and
9 Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9606 and 9607, as
10 amended, and Section 311 of the Federal Water Pollution Control
11 Act, 33 U.S.C. § 1321. This Consent Decree addresses the St.
12 Paul Waterway Problem Area sediment remedial action, associated
13 monitoring, reporting, contingency planning activities, and
14 natural resource damages matters with respect to the Settling
15 Defendants.

16 2. The United States and the other Natural Resource
17 Trustees in their Complaints seek: (i) reimbursement of monies
18 and costs incurred by the United States for its investigations,
19 studies, response and enforcement activities, and other necessary
20 response actions at the St. Paul Waterway Problem Area of the
21 Commencement Bay Nearshore/Tideflats (CB/NT) Superfund Site in
22 Tacoma, Washington, together with accrued interest; (ii) an
23 injunction requiring the Settling Defendants to perform Work at
24 the St. Paul Waterway Problem Area, as set forth in the attached
25 Monitoring, Reporting and Contingency Plan (the "Monitoring
26 Plan") (Exhibit A), and in conformity with EPA's Record of
27 Decision for the CB/NT site dated September 30, 1989 ("ROD",

1 Exhibit B), the National Contingency Plan ("NCP"), 40 C.F.R. Part
2 300, as amended, 55 Fed. Reg. 8666 (March 8, 1990), and CERCLA;
3 (iii) recovery of costs that will be incurred by EPA in
4 connection with the Work to be performed in (ii) above; (iv) the
5 submittal of a Superfund Completion Report regarding the sediment
6 remedial action for the St. Paul Waterway Problem Area; (v)
7 natural resource damages and associated costs for the St. Paul
8 Waterway Problem Area; and (vi) such other relief as the Court
9 finds appropriate.

10 3. In accordance with Sections 104(b)(2) and
11 121(f)(1)(F) of CERCLA, 42 U.S.C. §§ 9604(b)(2) and
12 9621(f)(1)(F), EPA has notified the State of Washington
13 Department of Ecology ("Ecology") of negotiations with
14 potentially responsible parties ("PRPs") regarding the scope of
15 the remedial action for the St. Paul Waterway Problem Area, and
16 EPA has provided the State of Washington with an opportunity to
17 participate in these negotiations and to be a party to any
18 settlement. As described further in paragraph 20 et seq.,
19 Ecology previously entered into a State Consent Decree (Wa. State
20 Dept. of Ecology v. Simpson Tacoma Kraft Co. and Wa. State Dept.
21 of Natural Resources, Pierce County Superior Court No. 87-2-
22 07673-9, December 24, 1989) (the "State Consent Decree") for
23 implementation of the St. Paul Waterway Area Remedial Action and
24 Habitat Restoration Project. EPA has also notified the Puyallup
25 Tribe of Indians ("Puyallup Tribe") of these negotiations. The
26 Puyallup Tribe has participated in these negotiations consistent
27 with the Cooperative Agreement between EPA and the Puyallup Tribe

1 | dated April 28, 1989, under which the Puyallup Tribe is a
2 | supporting agency for remedial actions at the Site. All other
3 | federal, state, and local agencies with jurisdiction which have
4 | issued permits for the remedial work have also been notified,
5 | including the U.S. Army Corps of Engineers, the State of
6 | Washington Department of Fisheries, and the City of Tacoma.

7 | 4. In accordance with Section 122(j)(1) of CERCLA,
8 | 42 U.S.C. § 9622(j)(1), EPA has notified the federal, state, and
9 | tribal natural resource trustees of the EPA's negotiations with
10 | the potentially responsible parties regarding the release or
11 | threatened release of hazardous substances at the St. Paul
12 | Waterway Problem Area and CB/NT site which may have resulted in
13 | injury to natural resources under their trusteeship. EPA has
14 | encouraged the participation of the federal, state and tribal
15 | natural resource trustees in such negotiations. The natural
16 | resource trustees for the St. Paul Waterway Problem Area and
17 | Commencement Bay are: (i) the National Oceanic and Atmospheric
18 | Administration of the U.S. Department of Commerce, (ii) the U.S.
19 | Department of Interior, (iii) the Washington Department of
20 | Ecology (on behalf of the Washington Department of Fisheries, the
21 | Washington Department of Natural Resources, and the Washington
22 | Department of Wildlife), (v) the Puyallup Tribe of Indians, and
23 | (vi) the Muckleshoot Indian Tribe. These parties (the "Natural
24 | Resource Trustees") have participated in the negotiations, and
25 | have reached a settlement with the Settling Defendants of their
26 | claims for damages due to injury to, destruction of, or loss of
27 | natural resources in the St. Paul Waterway Problem Area. The
28 | ST. PAUL WATERWAY CONSENT DECREE - Page 6

1 Natural Resource Trustees and the Settling Defendants agree that,
2 on the basis of the preliminary information available regarding
3 natural resource damages at the St. Paul Waterway Problem Area,
4 settlement of the claims as set forth in this Consent Decree is
5 in the public interest and is made in good faith and after arms-
6 length negotiations, and that entry of this Consent Decree is the
7 most appropriate means to resolve the matters covered herein.
8 The Settlement Agreement reached between the Settling Defendants
9 and the Natural Resource Trustees also provides a mechanism by
10 which the Settling Defendants and other potentially responsible
11 parties in Commencement Bay can participate in a Bay-wide natural
12 resource damage assessment. This Settlement Agreement is
13 attached to this Consent Decree as Exhibit C, and by this
14 reference incorporated herein and made a part of this Consent
15 Decree.

16 5. Pursuant to Section 105 of CERCLA, 42 U.S.C.
17 § 9605, as amended, EPA placed the CB/NT site in Tacoma,
18 Washington (the "Site" as defined in paragraph 31(S) below) on
19 the National Priorities List, set forth at 40 C.F.R. Part 300,
20 Appendix B, by publication in the Federal Register on
21 September 8, 1983, 48 Fed. Reg. 40,658.

22 6. Because of the complexity of the CB/NT site,
23 Superfund response actions at the CB/NT site are currently
24 coordinated under seven separate operable units managed primarily
25 by EPA and Ecology, including: (i) Operable Unit 01 - CB/NT
26 Sediments; (ii) Operable Unit 02 - Asarco Tacoma Smelter; (iii)
27 Operable Unit 03 - Tacoma Tar Pits; (iv) Operable Unit 04 -

1 Asarco Off-Property; (v) Operable Unit 05 - CB/NT Sources; (vi)
2 Operable Unit 06 - Asarco Sediments; and (vii) Operable Unit 07 -
3 Asarco demolition. This Consent Decree involves the St. Paul
4 Waterway sediment contamination, one of eight Problem Areas
5 within Operable Unit 01 of the Site identified for remedial
6 action in the ROD (Exhibit B).

7 7. In 1983, in response to a release or a
8 substantial threat of a release of hazardous substances at or
9 from the Site, EPA entered into a CERCLA Cooperative Agreement
10 with Ecology to conduct a Remedial Investigation and Feasibility
11 Study ("RI/FS") at the Site. The results of the RI were
12 published in August 1985, and the results of the FS were
13 published in February 1989.

14 8. Pursuant to Section 117 of CERCLA, 42 U.S.C.
15 § 9617, EPA published notice of the completion of the RI/FS and
16 of the proposed plan for remedial action on February 24, 1989,
17 and provided an opportunity for public comment on the proposed
18 remedial action through June 24, 1989. The ROD includes a
19 response to each of the significant comments, criticisms, and new
20 data submitted during the public comment period.

21 9. On September 30, 1989, EPA issued the ROD for two
22 operable units of the CB/NT site. The ROD addresses both
23 sediment remediation (Operable Unit 01) and source control
24 (Operable Unit 05). The ROD was concurred in by Ecology and the
25 Puyallup Tribe, with whom EPA has entered into Superfund
26 Cooperative Agreements for remedial activities at the Site.

27 Under a Cooperative Agreement with Ecology, effective May 1,

1 1989, EPA is designated as the lead agency for remediation of
2 contaminated sediments and Ecology as the lead agency for source
3 control of hazardous substances. The Cooperative Agreement with
4 the Puyallup Tribe is described in paragraph 3 above.

5 10. As described in the RI/FS for the CB/NT site,
6 there were nine Problem Areas of contaminated sediments and
7 sources of hazardous substances contamination. The ROD addressed
8 eight of these Problem Areas, including the St. Paul Waterway
9 Problem Area. The ninth Problem Area, the Asarco Sediments, is
10 now a separate operable unit of the CB/NT site and will be the
11 subject of a subsequent ROD. This Consent Decree addresses the
12 St. Paul Waterway Problem Area.

13 11. The St. Paul Waterway Problem Area contains
14 contaminated sediments adjacent to the Tacoma Kraft Mill
15 ("Mill"), now owned and operated by the Simpson Tacoma Kraft
16 Company ("Simpson"). The Mill is situated on a peninsula of
17 filled tidelands projecting into Commencement Bay between the
18 mouths of the Puyallup River and the St. Paul Waterway.

19 12. Simpson, a Washington corporation, owns and
20 operates the Mill facilities, which include a secondary
21 wastewater treatment plant, uplands, and the adjoining St. Paul
22 Waterway landward of the inner harbor line. Pulp and paper
23 operations began at the Mill in 1927 under the ownership of the
24 Union Bag Company, which operated the Mill until 1930. The St.
25 Regis Paper Company acquired the Mill in 1930 and operated it
26 until 1985, when St. Regis Paper Company merged with Champion
27 International Corporation ("Champion").

1 13. Simpson acquired the Mill from Champion in August
2 1985. The State of Washington owns the harbor area (the area
3 between the inner and outer harbor lines) and adjacent aquatic
4 lands, which are managed on behalf of the state by the State of
5 Washington Department of Natural Resources ("DNR"). Simpson
6 leases state-owned aquatic lands from the state by and through
7 DNR, as did previous mill owners and operators. Simpson and DNR
8 have entered into a lease and related agreement which include use
9 of the lands for the purposes set forth in this Consent Decree.

10 14. The bottom sediments in the St. Paul Waterway
11 Problem Area and adjacent to the Mill are contaminated by
12 chemicals and organic debris. As documented in the RI/FS, the
13 St. Paul Waterway Problem Area was among the most biologically
14 stressed areas in the Commencement Bay tideflats, with
15 concentrations of several chemicals over 1,000 times higher than
16 reference area concentrations. These findings were confirmed by
17 sampling of the Site by Parametrix, Inc., consultants for
18 Simpson, in their Tacoma Kraft Mill Sediment Investigation
19 submitted to Ecology in 1986.

20 15. Several studies have been conducted to
21 characterize the nature and extent of the hazardous substances,
22 pollutants and contaminants in the St. Paul Waterway Problem
23 Area, as well as any such substances present in the Puyallup
24 River sediments that were utilized for Simpson's sediment capping
25 action under the State Consent Decree (see paragraphs 3 and 20).
26 These studies have been described, referenced, and incorporated
27 into a document entitled Project Analysis for the St. Paul

1 Waterway Area Remedial Action and Habitat Restoration Project
2 ("Project Analysis", July 1987), consisting of a Project
3 Overview, SEPA Environmental Checklist and related environmental
4 assessment, ten technical appendices including Focused
5 Feasibility Study for the St. Paul Waterway Area (Appendix VI),
6 and other applicable studies referenced therein, including
7 relevant portions of the RI/FS as supplemented by Supplemental
8 Information Packets (September and December 1987).

9 16. The 17-acre St. Paul Waterway Problem Area was
10 identified for remedial action as a result of sediment
11 contamination adjacent to the Mill, which included five acres of
12 sediments near the old mill outfall with a high level of chemical
13 contamination and some organic debris, an area to the southeast
14 with a high level of organic debris and some chemical
15 contamination and the bottom of the entrance to the St. Paul
16 Waterway itself, which was contaminated by wood chips.

17 17. The principal chemicals identified in the RI/FS
18 as contaminants in the St. Paul Waterway Problem Area
19 included 4-methylphenol, phenol, 2-methoxyphenol, 1-methyl-2-
20 (methylethyl) benzene and other compounds, which are known to be
21 toxic to marine life. Measurements taken during the RI showed
22 concentrations of these chemicals in the sediments that exceeded
23 the cleanup goals and standards subsequently specified in the
24 CB/NT ROD. The RI also showed that the organic debris present in
25 sediments at the St. Paul Waterway problem area was in sufficient
26 quantities to restrict biological productivity.

1 18. The hazardous substances, pollutants, and
2 contaminants at the St. Paul Waterway Problem Area were primarily
3 released from the Mill.

4 19. Simpson has taken measures to reduce the levels
5 of hazardous substances or contaminants released from the Mill,
6 including a source control program and the installation of a new
7 Clean Water Act NPDES outfall for its secondary wastewater
8 treatment plant and additional stormwater and chip control
9 systems. Pursuant to delegated authority under the Clean Water
10 Act, Ecology required the NPDES outfall relocation. Ecology is
11 revising the Mill's NPDES permit in 1990.

12 20. On December 24, 1987, Simpson, Champion, and DNR
13 entered into a State Consent Decree with Ecology under applicable
14 hazardous waste cleanup laws (see paragraph 3 above). The State
15 Consent Decree required Simpson to isolate toxic concentrations
16 of contaminated sediments from the marine environment by
17 placement of a cap of clean sediments from a nearby section of
18 the Puyallup River over the contaminated sediments. These
19 activities were conducted between December 1987 and September
20 1988 and are described in more detail in the Superfund Completion
21 Report (Exhibit D). A habitat restoration program designed to
22 mitigate adverse biological impacts, to create intertidal habitat
23 for marine biota, and to support a productive biological
24 community was implemented along with the capping activities. The
25 project was designed to be consistent with all applicable,
26 relevant and appropriate laws and to meet state and local
27

1 environmental standards, including those under state hazardous
2 waste cleanup laws.

3 21. EPA was not a party to the 1987 State Consent
4 Decree and at the time the State Consent Decree was entered did
5 not formally approve of, concur in, or oversee the sediment
6 cleanup action, which was completed prior to issuance of EPA's
7 CB/NT ROD.

8 22. EPA's decision on the final remedial action plan
9 to be implemented under CERCLA and the NCP for the St. Paul
10 Waterway Problem Area is described in the CB/NT ROD.

11 23. In the ROD, EPA determined that there are five
12 major elements of the selected remedy for the Site sediments and
13 sources that will be applied, as appropriate, to each Problem
14 Area:

15 (A) Site Use Restrictions - To protect human health
16 by limiting access to edible resources prior to and
17 during implementation of source and sediment remedial
18 activities.

19 (B) Source Controls - To be implemented to prevent
20 recontamination of sediments.

21 (C) Natural Recovery - Included as an optional (and
22 preferred) remediation strategy for marginally
23 contaminated sediments that are predicted to achieve
24 acceptable sediment quality through burial and mixing
25 with naturally accumulating clean sediments within a
26 ten year period.

1 (D) Sediment Remedial Action - To address
2 contaminated sediments that are not expected to
3 naturally recover within ten years following
4 implementation of all known, available, and reasonable
5 source control measures.

6 (E) Source and Sediment Monitoring - To refine
7 cleanup volume estimates, characterize the
8 effectiveness of source controls, and implement long-
9 term monitoring of the sediment remedial actions(s) to
10 ensure long-term protectiveness of the remedy.

11 24. For the St. Paul Waterway Problem Area, the ROD
12 specifies that source control, confinement of contaminated
13 sediments, and source and sediment monitoring are the selected
14 remedy. Capping in place was specifically identified as the most
15 appropriate option for confinement of contaminated sediments in
16 the St. Paul Waterway Problem Area, given the type, extent and
17 severity of the sediment contamination. While the actions
18 previously implemented by Simpson in the St. Paul Waterway
19 Problem Area under the 1987 State Consent Decree implemented and
20 largely accomplished EPA's selected remedy for the cleanup of
21 contaminated sediments in the St. Paul Waterway Problem Area as
22 determined in the ROD, revisions in the Monitoring Plan are
23 necessary to ensure consistency of the St. Paul Waterway action
24 with EPA's ROD and with the settlement of natural resource damage
25 claims. Source control and related activities are being
26 implemented under the Mill's NPDES permit administered by
27 Ecology.

1 25. Pursuant to Section 121(d)(1), the Settling
2 Parties agree that the sediment remedial action previously
3 conducted by the Settling Defendants at the St. Paul Waterway
4 under the 1987 State Consent Decree, subject to monitoring and
5 maintenance by the Settling Defendants in accordance with the
6 provisions of this Consent Decree and attached Monitoring Plan
7 (Exhibit A), will attain a degree of cleanup that assures
8 protection of human health and the environment.

9 26. In signing this Decree, defendants Simpson,
10 Champion, and DNR deny any and all legal and equitable liability
11 under any federal, state, local, or tribal statute, regulation,
12 or common law for any endangerment, nuisance, response, removal,
13 or remedial costs incurred or to be incurred by the United
14 States, the State of Washington, or other person as a result of
15 the release or threat of release of hazardous substances to, at,
16 from or near the Site. Pursuant to 42 U.S.C. § 9622(d)(1)(B),
17 entry of this Consent Decree is not an acknowledgement by
18 Settling Defendants that any release or threatened release of a
19 hazardous substance constituting an imminent and substantial
20 endangerment to human health or the environment has occurred or
21 exists at the Site. Defendants do not admit and retain the right
22 to controvert any of the factual or legal statements or
23 determinations made herein in any judicial or administrative
24 proceeding except an action to enforce this Consent Decree. They
25 do agree, however, to the Court's jurisdiction over this matter.
26 This Consent Decree shall not be admissible in any judicial or

1 administrative proceeding as proof of liability or an admission
2 of any fact dealt with herein, but it shall be admissible in an
3 action to enforce this Consent Decree.

4 NOW, THEREFORE, it is hereby Ordered, Adjudged, and
5 Decreed:

6 27. The Settling Parties agree to the entry of this
7 Consent Decree and agree to be bound by its terms. The Settling
8 Parties recognize, and the Court by entering this Consent Decree
9 finds, that implementation of this Consent Decree will fully
10 accomplish the St. Paul Waterway Problem Area sediment remedial
11 action in accordance with EPA's ROD for the CB/NT site, will
12 resolve natural resource damage claims with respect to the St.
13 Paul Waterway Problem Area, address certain matters relating to
14 the CB/NT site, and will avoid prolonged and complicated
15 litigation between the Settling Parties, and that the entry of
16 this Consent Decree is in the public interest.

17 II. JURISDICTION

18 28. This Court has jurisdiction over the subject
19 matter herein, pursuant to 28 U.S.C. §§ 1331 and 1345 and
20 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has
21 personal jurisdiction over the Settling Defendants, which solely
22 for purposes of this Consent Decree and the underlying Complaint,
23 waive all objections and defenses that they may have to
24 jurisdiction of the Court or to venue in this District. The
25 Complaint states claims against the Settling Defendants upon
26 which relief may be granted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

III. PARTIES BOUND

29. This Consent Decree applies to and is binding upon the United States, the U.S. Environmental Protection Agency, the Natural Resource Trustees, and the undersigned Settling Defendants, and all of their respective directors, officers, employees, agents, successors, trustees, and assigns.

30. The Settling Defendants shall be responsible for ensuring that their contractors and subcontractors perform the Work in accordance with this Consent Decree and Monitoring Plan and shall include the requirement to perform the Work in accordance with this Consent Decree and Monitoring Plan in their contracts and subcontracts. Each contractor and subcontractor hired by Settling Defendants to perform Work under this Consent Decree shall be deemed to be related by contract to the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). Thus, as to acts or omissions of contractors, the Settling Defendants shall not assert a defense based upon Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3). The Settling Defendants shall provide a copy of this Consent Decree to each contractor and each subcontractor hired to perform Work that is required by this Consent Decree in an amount greater than \$100,000.

25
26
27
28

IV. DEFINITIONS

31. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning

1 assigned to them in the statute or its implementing regulations.
2 Whenever terms are used in this Consent Decree and the Exhibits
3 attached hereto, the following definitions specified in this
4 paragraph shall apply.

5 (A) "Consent Decree" means this Decree and all
6 Appendices and Exhibits attached hereto.

7 (B) "Consulted Agencies" means the governmental
8 entities which have committed to participating in the
9 Monitoring Plan and its contingency planning process.
10 These entities are: the Washington Department of
11 Ecology ("Ecology"), Washington State Department of
12 Fisheries ("WDF"), Washington State Department of
13 Natural Resources ("DNR") (in its capacity as a
14 natural resource trustee), Washington State Department
15 of Wildlife, National Oceanic and Atmospheric
16 Administration ("NOAA") of the U.S. Department of
17 Commerce, United States Department of the Interior
18 including the U.S. Fish and Wildlife Service and
19 Bureau of Indian Affairs, Puyallup Tribe of Indians
20 ("Puyallup Tribe"), and the Muckleshoot Tribe of
21 Indians.

22 (C) "Contractor" or "Subcontractor" means the company
23 or companies retained by or on behalf of the Settling
24 Defendants to undertake and accomplish the Work and
25 associated activities required by this Consent Decree
26 and attached ROD and Monitoring Plan.

1 (D) "Effective Date" means the date the Consent
2 Decree is entered by the Court.

3 (E) "EPA" means the United States Environmental
4 Protection Agency.

5 (F) "Future Response Costs" shall mean all direct and
6 indirect investigation, enforcement, and response
7 costs (including applicable interest), except
8 oversight response costs, incurred by the United
9 States with respect to the St. Paul Waterway Problem
10 Area after the date of entry of this Consent Decree.

11 (G) "Institutional Controls" refer to the land use
12 restrictions and other regulations, ordinances,
13 covenants, and controls developed pursuant to the
14 Consent Decree to maintain the integrity and prevent
15 the unauthorized disturbance of the sediment cap,
16 monitoring stations, or other structures that will be
17 constructed, or other remedial measures that will be
18 implemented, at the St. Paul Waterway Problem Area.

19 (H) "Monitoring Plan" means the "Monitoring,
20 Reporting and Contingency Plan" attached as Exhibit A
21 to this Consent Decree which describes the monitoring
22 requirements, sampling, analyses, quality
23 assurance/quality control procedures, reporting
24 requirements and contingency plans and other actions
25 necessary for the proper operation and maintenance of
26 the sediment remedial action in the St. Paul Waterway
27 Problem Area.

1 (I) "National Contingency Plan ('NCP')" shall be used
2 as that term is used in 42 U.S.C. § 9605 and 40 C.F.R.
3 Part 300, as amended, 55 Fed. Reg. 8666 (March 8,
4 1990).

5 (J) "Natural Resource Trustees" shall mean those
6 entities identified as such pursuant to Section 107(f)
7 of CERCLA and Subpart G of the National Contingency
8 Plan, 40 C.F.R. §§ 300.600 through 300.615, and
9 include the National Oceanic and Atmospheric
10 Administration of the U.S. Department of Commerce, and
11 the U.S. Department of the Interior (hereinafter the
12 "federal Natural Resource Trustees"), and the
13 Washington Department of Ecology (on behalf of the
14 Washington Department of Fisheries, the Washington
15 Department of Natural Resources, and the Washington
16 Department of Wildlife), the Puyallup Tribe of
17 Indians, and the Muckleshoot Indian Tribe (hereinafter
18 the "other Natural Resource Trustees").

19 (K) "Oversight Response Costs" shall mean all costs,
20 including indirect costs, incurred by the United
21 States in overseeing the remedial action and
22 Monitoring Plan, including but not limited to, the
23 costs of reviewing and developing plans, reports and
24 other items pursuant to this Consent Decree and
25 verifying the remedial action and Work. Oversight
26 Response Costs shall also mean costs incurred by the
27 United States under its cooperative agreement with

1 Ecology, in an amount not to exceed \$10,000, and under
2 its cooperative agreement with the Puyallup Tribe for
3 the following tribal activities: (1) conduct of an
4 annual cap inspection, (2) review of draft and final
5 reports required under the Monitoring Plan, and (3)
6 participation in the Contingency Planning Process.

7 (L) "Past Response Costs" shall mean all costs,
8 including accrued interest and indirect costs incurred
9 by the United States and through EPA's cooperative
10 agreements with Ecology and the Puyallup Tribe, with
11 respect to the St. Paul Waterway Problem Area through
12 the date of entry of this Consent Decree. EPA's Past
13 Response Costs through the date of the ROD (September
14 30, 1989) are specified in the Cost Allocation Summary
15 (Exhibit E).

16 (M) "Project Coordinator" means the person designated
17 by the Settling Defendants with responsibility for
18 supervising or overseeing the Work to be performed
19 under this Consent Decree and Monitoring Plan.

20 (N) "Record of Decision ('ROD')" shall mean the EPA
21 Record of Decision set forth as Exhibit B to this
22 Consent Decree relating to the Commencement Bay
23 Nearshore/Tideflats Superfund Site, including the St.
24 Paul Waterway Problem Area, signed on September 30,
25 1989, by the Regional Administrator, EPA Region 10,
26 and all attachments thereto.

1 (O) "Sediment Remedial Action" means the sediment
2 remedial action for the St. Paul Waterway Problem Area
3 described in section 10.2.4 of the ROD and in the
4 Superfund Completion Report (Exhibit D).

5 (P) "Settling Defendants" means the Defendants
6 Simpson Tacoma Kraft Company, Champion International
7 Corporation, and the State of Washington, by and
8 through the State of Washington Department of Natural
9 Resources.

10 (Q) "Settling Parties" means the Settling Defendants,
11 the United States on behalf of EPA and the federal
12 Natural Resource Trustees, and the other Natural
13 Resource Trustees.

14 (R) "St. Paul Waterway Problem Area" refers to the
15 17-acre area, inclusive of the contaminated sediments
16 contained therein, located adjacent to the Simpson
17 Tacoma Kraft Mill in the St. Paul Waterway as
18 described in the ROD and the Superfund Completion
19 Report.

20 (S) "Site" means the entire Commencement Bay
21 Nearshore/Tideflats Superfund Site and project area,
22 located in Tacoma, Washington, as defined in the ROD,
23 including the St. Paul Waterway Problem Area.

24 (T) "Work" means all activities the Settling
25 Defendants are required to perform under this Consent
26 Decree to implement the ROD for the St. Paul Waterway
27 Problem Area of the Site, including the sediment

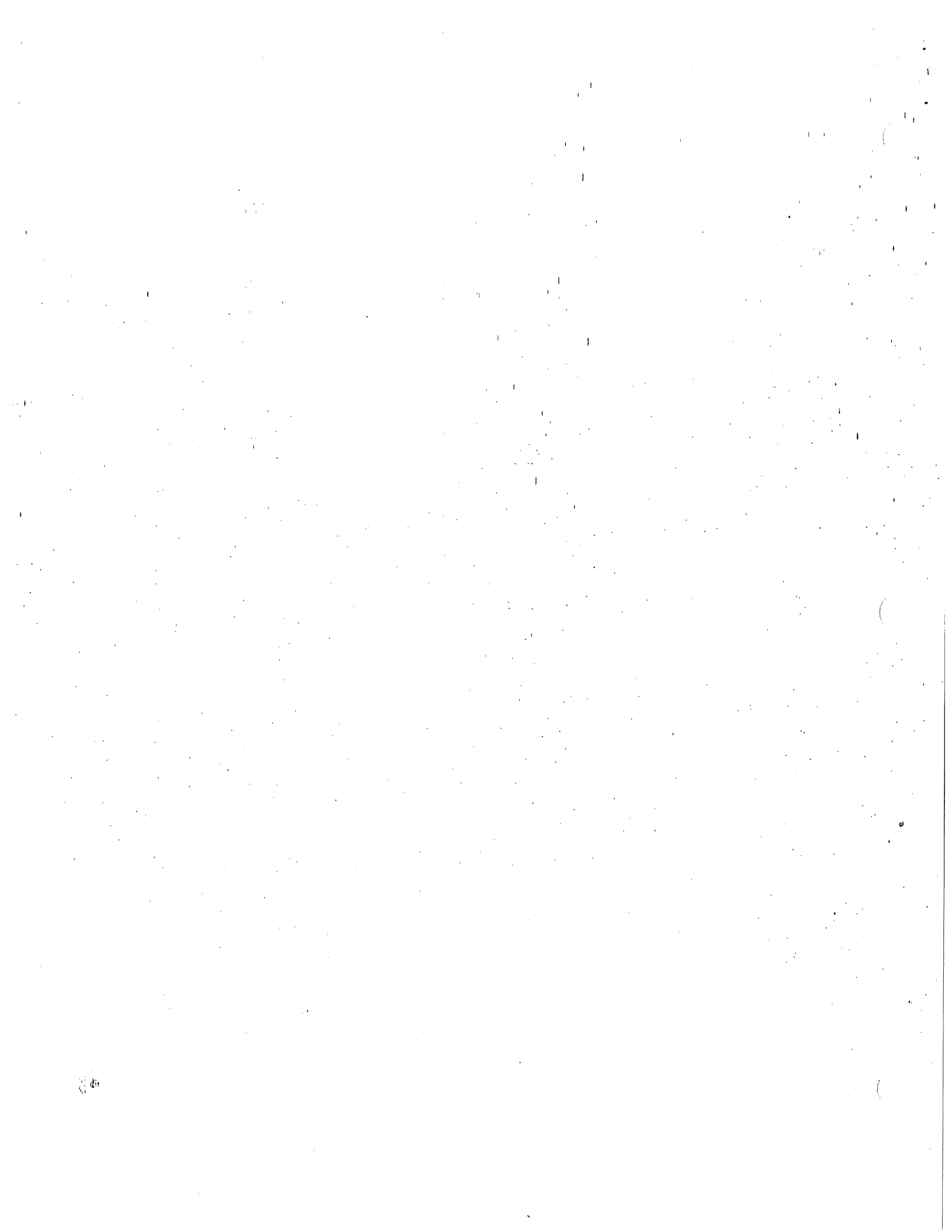
1 remedial action tasks described in this Consent Decree
2 and the attached Monitoring Plan and schedules.

3
4 V. GENERAL PROVISIONS

5 32. The objectives of the Settling Parties in
6 entering into this Consent Decree are (i) to protect the public
7 health and welfare and the environment from releases or
8 threatened releases of hazardous substances, pollutants, or
9 contaminants from the St. Paul Waterway Problem Area of the Site
10 by the implementation of the sediment remedial action and
11 monitoring, reporting and contingency activities by the Settling
12 Defendants, (ii) to restore habitat and natural resources with
13 respect to past activities in the St. Paul Waterway Problem Area,
14 (iii) to reimburse governmental entities for all Past, Future,
15 and Oversight Response costs, and (iv) to encourage public and
16 private cooperation to accomplish effective cleanup actions and
17 to restore the environmental health of Commencement Bay.

18 33. Settling Defendants shall finance and perform the
19 Work in accordance with this Consent Decree and Monitoring Plan
20 (Exhibit A), CERCLA and the NCP, and any amendments to CERCLA and
21 the NCP which occur during the implementation of the Work, other
22 applicable laws (see paragraphs 43, 117, and 118) and in a manner
23 consistent with the ROD. EPA has determined that the activities
24 contemplated by this Consent Decree are consistent with the NCP.

25 34. The obligations of Settling Defendants to finance
26 and perform the Work and to reimburse the United States for its
27 Past Response Costs, Oversight Response Costs and Future Response



1 Costs under this Consent Decree are joint and several. In the
2 event of the insolvency or other failure of any one or more
3 Settling Defendants to implement the requirements of this Consent
4 Decree, the remaining Settling Defendants shall complete all such
5 requirements.

6 35. Except as provided in Section 121(e) of CERCLA
7 and the NCP, no permit shall be required for any portion of the
8 Work under this Consent Decree conducted entirely within the
9 Site. This Consent Decree is not, and shall not be construed to
10 be, a permit issued pursuant to any federal or state statute or
11 regulation. Settling Defendants shall obtain all permits or
12 approvals necessary for Work under this Consent Decree outside of
13 the Site, or for any purposes other than implementation of this
14 Consent Decree, under federal, state, or local laws and shall
15 submit timely applications and requests for any such permits and
16 approvals. All existing permits for the Work performed to date
17 are hereby superseded by this Consent Decree, and Settling
18 Defendants are not required to take any further actions under
19 those permits.

20 36. The Settling Parties agree that if Settling
21 Defendants or their Contractors arrange for the off-site storage,
22 treatment, disposal, or transportation of any hazardous substance
23 from the St. Paul Waterway Problem Area, then Settling Defendants
24 will, as required, obtain EPA prior written approval of the use
25 of any such off-Site facility in accordance with 42 U.S.C.
26
27

1 § 9621(e), and will comply with the applicable provisions of 40
2 C.F.R. Parts 261, 262, 263, 264, 265, and any relevant EPA
3 policies or guidances.

4 37. The standards and provisions of Section XIV
5 describing Force Majeure shall govern delays in obtaining any
6 necessary approvals or permits required for the Work and also the
7 denial of any such approvals or permits. However, the Settling
8 Defendants are required to make timely application for necessary
9 permit approvals and must provide any additional information
10 needed by the regulatory or consulting agency in a timely manner.

11 38. Settling Defendants shall include in all
12 contracts or subcontracts entered into for Work required under
13 this Consent Decree, provisions stating that such contractors or
14 subcontractors, including their agents and employees, shall
15 perform all activities required by such contracts or subcontracts
16 in compliance with all applicable laws and regulations.

17 39. All exhibits, appendices, and attachments to this
18 Consent Decree and any and all reports, plans, specifications,
19 schedules, and other documents required by the terms of this
20 Consent Decree and approved by EPA in accordance with the
21 provisions of this Consent Decree are incorporated into this
22 Consent Decree and enforceable under it.

23
24 VI. TRANSFERS OF INTEREST OR PROPERTY

25 40. The obligations of each Settling Defendant who
26 owns any interest in the Mill or property included in the St.
27 Paul Waterway Problem Area, with respect to undertaking and

1 maintaining the Work set forth in this Consent Decree and the
2 attached Monitoring Plan, or developed thereunder, shall run with
3 the land and shall be binding upon any and all persons who
4 acquire any interest in the Mill or any property included in the
5 St. Paul Waterway Problem Area. Within thirty (30) calendar days
6 of the effective date of this Consent Decree, the Settling
7 Defendants shall record a copy of this Decree with the Recorder's
8 Office, Pierce County, Washington. A copy of the recorded notice
9 shall be sent to EPA.

10 41. The Mill or any property within St. Paul Waterway
11 Problem Area may be freely alienated provided that at least sixty
12 (60) calendar days prior to the date of such alienation, the
13 Settling Defendants notify EPA in writing of such proposed
14 alienation, the name of the grantee, and a description of the
15 Settling Defendants' obligations, if any, to be performed by such
16 grantee. In the event of such alienation, all of Settling
17 Defendants' obligations pursuant to this Decree shall continue to
18 be met by the Settling Defendants or, subject to EPA approval, by
19 Settling Defendants and the grantee.

20 42. Prior to termination of this Consent Decree under
21 paragraph 125, any deed, title, or other instrument of conveyance
22 regarding the Mill or St. Paul Waterway Problem Area shall
23 contain a notice that such property is the subject of this
24 Consent Decree, setting forth the style of the case, case number,
25 and Court having jurisdiction herein.

1 VII. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

2 43. The Work to be performed is specified in the
3 attached Monitoring Plan (Exhibit A). The provisions of this
4 Monitoring Plan shall take effect on the effective date of this
5 Consent Decree. The Monitoring Plan is incorporated by reference
6 into this Consent Decree and its terms, conditions, and
7 requirements are enforceable under the provisions of this Decree.
8 All Work shall be conducted in accordance with CERCLA, the NCP,
9 and the requirements of this Consent Decree. Any modifications
10 to the Work performed shall be approved by EPA under paragraph
11 46, 68, or 120.

12 44. The following Work shall be performed, as
13 specified in the Monitoring Plan:

14 (A) Conduct monitoring and report results in
15 accordance with the schedules, methods, sampling and
16 analysis protocols in the Monitoring Plan.

17 (B) Review and revise annual monitoring programs
18 under EPA direction and approval.

19 (C) Implement contingency planning, contingency
20 response, and expedited review procedures, if
21 necessary.

22 45. Simpson shall perform or arrange for the
23 performance of the monitoring unless the Settling Defendants
24 inform EPA otherwise. Work under this Consent Decree shall be
25 under the direction and supervision, as applicable, of a
26 qualified professional engineer, biologist, environmental
27 professional, certified hydrogeologist, or equivalent, with

1 | experience and expertise in contaminated site monitoring. Where
2 | appropriate, Simpson's project coordinator may direct and
3 | supervise the Work. EPA shall have the right to approve such
4 | supervisor, which consent shall not be unreasonably withheld.
5 | Simpson shall also inform EPA of the principal contractors and
6 | subcontractors to be used in advance of their involvement at the
7 | site where possible. In the event of EPA disapproval, Simpson
8 | shall promptly, but not later than 30 days, resubmit to EPA the
9 | names of its new selections.

10 | 46. Performance standards. (i) Purpose of
11 | performance standards. The performance standards are designed to
12 | evaluate the protectiveness of the remedy at the St. Paul
13 | Waterway Problem Area. These standards, as described in
14 | subparagraph (ii) below, shall be met at the St. Paul Waterway
15 | Problem Area. These performance standards are based on sediment
16 | quality objectives in the ROD, specific human health risk
17 | assessments, environmental effects tests, and associated
18 | interpretive guidelines. The Settling Defendants shall conduct
19 | sampling and monitoring activities in accordance with the
20 | attached Monitoring Plan in order to determine whether these
21 | performance standards are being attained. In accordance with the
22 | Contingency Planning Procedures of the Monitoring Plan, EPA may
23 | direct the Settling Defendants to conduct additional sampling and
24 | analysis if necessary to determine whether the performance
25 | standards are being attained.

26 | (ii) Definition of performance standards. There are
27 | three types of performance standards: physical, biological and

1 chemical. The chemical performance standards are interim
2 standards that apply as described in subparagraph (C) and until
3 reference stations for biological tests are established and
4 approved by EPA in accordance with the Monitoring Plan. At that
5 time, the biological performance standards will become effective
6 under this Decree. All data will be used throughout the duration
7 of monitoring activities under this Consent Decree for evaluating
8 the early warning triggers specified in the Monitoring Plan.

9 (A) Physical performance standard. A minimum of
10 three feet of sediment meeting the performance
11 standards in this paragraph shall be maintained at all
12 times throughout Areas A and B of the Problem Area
13 (see Figure 1d of Monitoring Plan, Exhibit A).

14 (B) Biological performance standard. (1)
15 This standard is measured by three
16 biological tests: benthic infauna
17 abundance, amphipod mortality bioassay, and
18 larval abnormality bioassay. These tests
19 were used to establish the sediment quality
20 objectives specified in the ROD. A
21 determination by EPA of an adverse effect
22 for the benthic infauna test, the amphipod
23 mortality bioassay, and either the bivalve
24 larvae abnormality test or echinoderm
25 larvae bioassay test shall be considered a

1 failure to attain the biological performance
2 standard.

3 (2) The Monitoring Plan contains requirements for
4 annual monitoring of benthic and epibenthic abundance
5 and monitoring of seeps, vents, and sediments in the
6 Problem Area; there are no routine requirements for
7 conducting bioassay tests. Should EPA determine that
8 the data resulting from the Monitoring Plan indicate
9 the need for further evaluation or sampling to
10 determine whether the performance standards are being
11 attained, EPA may require the Settling Defendants to
12 conduct additional biological tests or take other
13 actions in accordance with the Contingency Planning
14 Process of the Monitoring Plan.

15 (3) EPA shall determine adverse effects for each of
16 the three biological performance standard tests as
17 described below:

18 (a) Benthic infauna abundance (in-situ). The
19 test sediment sample has a lower (statistically
20 significant using a one-tailed t-test with a
21 comparison error rate of $P \leq 0.05$) mean abundance
22 than the reference sediment sample of any of the
23 following major taxa: crustacea, mollusca, and
24 polychaeta; and the test sediment sample mean
25 abundance is less than 50 percent of the
26 reference sample mean total abundance.

1 (b) Amphipod mortality bioassay. The test
2 sediment sample has a higher (statistically
3 significant using a one-tailed t-test with a
4 comparison error rate of $P \leq 0.05$) mean mortality
5 than the reference sample, and the test sediment
6 sample mean mortality exceeds 25 percent
7 (absolute).

8 (c) Larval abnormality bioassay (oyster or
9 echinoderm). The test sediment sample has a
10 higher (statistically significant using a one-
11 tailed t-test with a comparison error rate of $P \leq$
12 0.05) mean abnormality than the reference
13 sediment sample, and the test sediment sample
14 mean abnormality exceeds 20 percent (absolute).

15 (4) The selection of reference areas for the purpose
16 of taking reference sediment samples for the
17 biological tests will be determined in accordance with
18 the Monitoring Plan. Samples for benthic infauna
19 analyses shall be taken in accordance with the
20 sampling and analytical methods, including replicate
21 samples, specified in the Monitoring Plan. Sediment
22 samples for bioassay analyses shall be collected from
23 the top two centimeters of the cap and analyzed in
24 accordance with applicable Puget Sound Estuary Program
25 protocols. The control and reference area criteria
26 established for the bioassays by the Puget Sound
27 Estuary Program protocols shall be used.

1 (C) Chemical performance standards. These standards
2 are interim performance standards as described above
3 and are specified as the lowest AET in Table 7 of the
4 Monitoring Plan. These standards are based upon the
5 interpretation of the biological tests described in
6 subparagraph (B) above using the Apparent Effects
7 Threshold (AET) method and on human health risk
8 assessment procedures. These chemical performance
9 standards are attained when the concentration of a
10 chemical in a sediment sample taken from the top two
11 centimeters of the cap is less than the lowest AET
12 value for that chemical in Table 7. However, if the
13 lowest AET value in Table 7 is exceeded, EPA may
14 determine, under the Contingency Planning Process,
15 that the chemical performance standard is being
16 attained if a combination of chemical and biological
17 data demonstrate no adverse biological effects.

18 (iii) Modifications to AET database or sampling and
19 test evaluation protocols. EPA may propose modifications to the
20 AET database or sampling and test evaluation protocols, including
21 QA/QC protocols, for the biological and chemical performance
22 standards after the date of this Consent Decree. EPA will first
23 consult with Settling Defendants and consulting agencies on
24 proposed modifications. If EPA and the Settling Defendants
25 agree on a modified AET database or sampling and test evaluation
26 protocols, the modified database or protocols will be used in
27 determining attainment of performance standards. If agreement is

1 not reached, the matter will be resolved in accordance with the
2 dispute resolution procedures described in Section XV of this
3 Consent Decree. Any modifications of the AET database or
4 sampling and test evaluation protocols will be documented and
5 filed with the court in accordance with paragraph 120 of this
6 Consent Decree.

7 47. Failure to attain performance standards. If one
8 or more of the performance standards is not attained, or if the
9 remedy is otherwise not protective of human health and the
10 environment, EPA shall determine -- where appropriate under the
11 Contingency Planning Procedures of the Monitoring Plan or under
12 Section IX, XIX, or XXIV below -- the additional response
13 activities to be conducted. If the problem has not been
14 corrected after proceeding under the Contingency Planning
15 Process, EPA shall determine whether the Settling Defendants
16 have failed to comply with the requirements of this Consent
17 Decree. Such failure shall be considered a matter not covered
18 under Section XVIII below and subject to the provisions of
19 paragraph 101 below.

20 48. The Settling Defendants acknowledge and agree
21 that nothing in this Consent Decree, including the Monitoring
22 Plan, constitutes a warranty or representation of any kind by EPA
23 or the United States that compliance with this Consent Decree
24 will achieve the performance standards set forth in paragraph 46
25 above, and that such compliance shall not foreclose the United
26 States from seeking performance of all terms and conditions of
27 this Consent Decree.

1
2 VIII. ADDITIONAL WORK

3 49. If the Settling Defendants determine that
4 additional Work may be necessary to attain the performance
5 standards of this Consent Decree, the Settling Defendants shall
6 obtain EPA's approval to proceed prior to performing such Work.

7 50. As specified in the Contingency Planning Process
8 in the Monitoring Plan, EPA shall consult and coordinate Work
9 with the Consulted Agencies prior to performing additional Work,
10 or requiring the Settling Defendants to perform additional Work,
11 that is authorized by the Contingency Response Process. Further,
12 EPA shall use best efforts consistent with this Consent Decree
13 and the State Consent Decree dated December 24, 1987, as amended,
14 to coordinate with Ecology in the event that any future
15 enforcement actions are initiated by EPA under this Consent
16 Decree or by Ecology.

17
18 IX. PERIODIC REVIEW TO ENSURE PROTECTION OF HUMAN HEALTH AND
19 THE ENVIRONMENT

20 51. EPA will conduct reviews of the sediment remedial
21 action in accordance with CERCLA § 121(c), 42 U.S.C. § 9621(c),
22 and any applicable regulations or guidance, based on data
23 received under the Monitoring Plan together with any other
24 appropriate information. If EPA determines as a result of this
25 review that further response action under CERCLA § 104 or § 106
26 may be necessary, EPA shall provide the Settling Defendants a
27 reasonable opportunity to confer in accordance with the

1 contingency planning process prior to implementing a response
2 action. After such consultation, EPA shall, in writing, either
3 affirm, modify, or rescind the determination of the need for
4 further response action. If directed by EPA, the Settling
5 Defendants shall perform the response action unless they request
6 review of EPA's final decision pursuant to the dispute resolution
7 provisions in Section XV of this Decree, to the extent permitted
8 by CERCLA § 113, 42 U.S.C. § 9613.

9
10 X. QUALITY ASSURANCE

11 52. Settling Defendants shall use quality assurance,
12 quality control, and chain of custody procedures in accordance
13 with EPA's "Interim Guidelines and Specifications for Preparing
14 Quality Assurance Project Plans" (QAM-005/80), EPA's "Data
15 Quality Objective Guidance" (EPA/540/G87/003 and 004), Puget
16 Sound Estuary Protocols (1986-1990), and subsequent amendments to
17 such guidelines. All such procedures and provisions for
18 modifications are included in the Monitoring Plan and paragraph
19 46 of this Consent Decree. Should any need for modifications
20 arise, the modifications will be provided to the Settling
21 Defendants by EPA and incorporated into the Monitoring Plan
22 pursuant to paragraphs 46 and 120. Any disagreements with such
23 modifications shall be resolved under the dispute resolution
24 provisions in this Consent Decree. Sampling data generated
25 consistent with the Monitoring Plan shall be admissible as
26 evidence against Settling Defendants, and Settling Defendants

1 waive any objection to admissibility of such evidence in any
2 proceeding under this Consent Decree.

3 53. Selection of any laboratory to be utilized by
4 Settling Defendants in implementing this Consent Decree is
5 subject to approval by EPA. Settling Defendants shall ensure
6 that EPA and its authorized representatives have reasonable
7 access to each laboratory in order to inspect that laboratory,
8 pertinent laboratory records, and equipment utilized in
9 implementing this Consent Decree. Settling Defendants shall also
10 require each laboratory selected to submit a quality assurance
11 plan to EPA. In addition, Settling Defendants shall require each
12 laboratory to perform analyses of samples provided by EPA
13 according to EPA specified methods, to demonstrate the quality of
14 each laboratory's analytical data.

15
16 XI. SITE ACCESS AND SAMPLING

17 54. (i) As of the effective date of this Consent
18 Decree, EPA and its authorized representatives, including Ecology
19 and the Puyallup Tribe, and their contractors, shall have access
20 to the St. Paul Waterway Problem Area and any property to which
21 access is required for the oversight or implementation of this
22 Consent Decree, to the extent access to the property is
23 controlled by or available to Settling Defendants. EPA, Ecology,
24 the Puyallup Tribe and their authorized representatives shall
25 have the authority to enter and freely move about such property
26 at all reasonable times for the purposes of overseeing the

1 requirements of this Consent Decree, including, but not limited
2 to:

3 (A) Conducting any activity authorized by or related
4 to CERCLA, the Resource Conservation and Recovery Act
5 ("RCRA"), 42 U.S.C. §§ 6901 et seq., the NCP or this
6 Consent Decree;

7 (B) Monitoring the Work, progress of such Work, or
8 any other activities undertaken on the property;

9 (C) Verifying any data or information submitted to
10 EPA;

11 (D) Inspecting and copying records, operation logs,
12 contracts, or other documents maintained or generated
13 by Settling Defendants or their agents or contractors
14 for the Work undertaken pursuant to this Consent
15 Decree;

16 (E) Conducting such tests, investigations, or sample
17 collections as deemed necessary to monitor compliance
18 with this Consent Decree;

19 (F) Using a camera, sound recording, or other
20 documentary type equipment to record Work done
21 pursuant to this Consent Decree;

22 (G) Assessing the need for, planning, or implementing
23 additional response actions at or near the St. Paul
24 Waterway Problem Area; and

25 (H) Assessing Settling Defendants' compliance with
26 the terms of this Consent Decree.

1 (ii) Settling Defendants shall have the right to
2 accompany EPA, Ecology, the Puyallup Tribe, or their authorized
3 representative on the property. Parties with access to the
4 property shall comply with applicable health and safety
5 requirements and shall not interfere, to the extent practicable,
6 with ongoing operations.

7 55. To the extent that the St. Paul Waterway or any
8 other area where Work is to be performed under this Consent
9 Decree is owned or controlled by persons other than Settling
10 Defendants, Settling Defendants shall use best efforts to secure
11 from such persons access for Settling Defendants, as well as for
12 EPA and its representatives, including Ecology and the Puyallup
13 Tribe and their contractors, as necessary to implement this
14 Consent Decree. For purposes of this paragraph "best efforts"
15 includes, but is not limited to, seeking judicial assistance. If
16 any access required to complete the Work is not obtained within
17 thirty (30) days of the effective date of this Consent Decree, or
18 within 30 days of the date EPA notifies Settling Defendants in
19 writing that additional access beyond that previously secured is
20 necessary, Settling Defendants shall promptly notify EPA. EPA
21 may thereafter assist Settling Defendants in obtaining access.
22 Settling Defendants shall reimburse the United States, in
23 accordance with the procedures in Section XVII, for Future
24 Response Costs incurred in implementing this paragraph.

25 56. Notwithstanding any provision of this Consent
26 Decree, EPA, Ecology and the Puyallup Tribe retain all of their
27 access authorities and rights under CERCLA, RCRA and any other

1 applicable federal or state statute, regulation or other
2 authority.

3
4 XII. REPORTING, DOCUMENT RETENTION AND AVAILABILITY

5 57. Settling Defendants shall report to EPA or its
6 authorized representatives the results of all sampling and/or
7 tests, quality assurance data, and other data generated by
8 Settling Defendants as specified by the Monitoring Plan. All
9 reports submitted to EPA under the Monitoring Plan shall be
10 signed by the Project Coordinator or designee and shall be filed
11 with the Court after approval by EPA.

12 58. All required work plans, reports, and other
13 documents ("documents") shall be subject to review and approval
14 by EPA.

15 59. Except as provided in the Monitoring Plan:

16 (A) EPA shall notify the Settling Defendants in
17 writing of approval or disapproval of the document, or
18 any part thereof, within thirty (30) calendar days of
19 receipt of any document required by this Consent
20 Decree. In the event EPA needs a longer review
21 period, EPA shall notify Settling Defendants of its
22 revised response date within thirty (30) calendar days
23 of receipt of the document.

24 (B) In the event of disapproval, EPA shall specify in
25 writing any deficiencies and modifications to the
26 document. Nothing in this provision shall negate
27 EPA's right to approve or disapprove a submittal by

1 the Settling Defendants should the time periods stated
2 in this paragraph be exceeded by EPA, nor shall such
3 delay by EPA subject Settling Defendants to any
4 enforcement action.

5 (C) Within thirty (30) calendar days of receipt of
6 any document disapproval or comments for revision, the
7 Settling Defendants shall either: (1) submit a revised
8 document to EPA which incorporates EPA's modifications
9 or summarizes and addresses EPA's concerns or (2)
10 provide a notice of dispute under Section XV of this
11 Consent Decree.

12 60. If the date for submission of any item or
13 notification required by this Consent Decree falls upon a weekend
14 or state or federal holiday, the time period for submission of
15 that item or notification is extended to the next working day
16 following the weekend or holiday.

17 61. Upon the occurrence of any event during
18 performance of the Work under this Consent Decree which, pursuant
19 to Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R.
20 § 300.63, and pursuant to Section 304 of the Emergency Planning
21 and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11004,
22 requires reporting, the Settling Defendants shall within
23 twenty-four (24) hours orally notify the EPA Project
24 Coordinator/OSC, and the EPA Superfund Response and Investigation
25 Section, Region 10, in addition to the reporting required by
26 Section 103 of CERCLA and Section 304 of EPCRA. Within twenty
27 (20) calendar days of the onset of such an event, the Settling

1 Defendants shall furnish to EPA a written report setting forth
2 the events which occurred and the measures taken, and to be
3 taken, in response thereto. Within thirty (30) calendar days of
4 the conclusion of such an event, the Settling Defendants shall
5 submit a report setting forth all final actions taken to respond
6 thereto. Reports submitted in compliance with other laws that
7 include information required by this Consent Decree may be
8 submitted under this Consent Decree and may be appended to a
9 regular monitoring report rather than being submitted to the
10 court separately.

11 62. The Settling Defendants shall make available to
12 EPA, and shall retain, during the pendency of this Consent Decree
13 and for a period of ten (10) years after its termination, all
14 records, data, and documents in their possession, custody or
15 control which relate to the performance of this Consent Decree,
16 and State Consent Decree, including documents reflecting the
17 results of any sampling and all documents pertaining to their own
18 or any other person's response actions or costs under CERCLA.
19 The Settling Defendants shall require all such records in the
20 possession of their contractors or agents to be provided to them
21 and shall retain originals or true copies of all such records.
22 After the ten (10) year period of document retention, the
23 Settling Defendants shall notify EPA at least ninety (90)
24 calendar days prior to the destruction of any such documents and
25 the Settling Defendants shall relinquish custody of the documents
26 to EPA on request.

1 63. Except as provided by paragraph 65 below, the
2 Settling Defendants may assert business confidentiality claims
3 covering part or all of the information provided in connection
4 with this Consent Decree to the extent permitted by and in
5 accordance with Section 104(e)(7)(A) of CERCLA, 42 U.S.C.
6 § 9604(e)(7)(A), and pursuant to EPA's Confidential Business
7 Information regulations contained at 40 C.F.R. §§ 2.203 - 2.206.

8 64. Documents or information determined to be
9 confidential by EPA will be afforded the protection specified in
10 40 C.F.R. Part 2, Subpart B. If no such written claim
11 accompanies the information when it is submitted to the EPA, or
12 if EPA has notified Settling Defendants that the documents or
13 information are not confidential under the standards of Section
14 104(e)(7) of CERCLA, the public may be given access to such
15 information without further notice to the Settling Defendants
16 unless such information is subject to the requirements of
17 paragraph 65.

18 65. Information acquired or generated by the Settling
19 Defendants in performance of the Monitoring Plan and Work under
20 this Consent Decree that is subject to the provisions of Section
21 104(e)(7)(F) of CERCLA, 42 U.S.C. § 9604(e)(7)(F), shall not be
22 claimed as confidential by the Settling Defendants. EPA may make
23 Settling Defendants' preliminary or draft data or documents
24 available to its contractors involved in reviewing such
25 information in accordance with contractual requirements on
26 confidentiality. Except as specifically provided in the
27 Monitoring Plan, EPA shall not make Settling Defendants'

1 documents that are marked as preliminary or draft data or
2 documents available to Consulted Agencies or any other person
3 without prior consultation with the Project Coordinator. Except
4 as provided in the Monitoring Plan, the Consulted Agencies also
5 shall not make Settling Defendants' preliminary or draft data or
6 documents available to any other person without prior
7 consultation with EPA's RPM and the Project Coordinator. If
8 Settling Defendants request, EPA or the Consulted Agency shall
9 include an explanation regarding the reliability or status of any
10 preliminary or draft data or documents being made available.

11
12 XIII. DESIGNATION OF REMEDIAL PROJECT MANAGER/ON-SCENE
13 COORDINATOR AND PROJECT COORDINATOR

14 66. Within twenty (20) calendar days of the effective
15 date of this Consent Decree, the Settling Defendants shall notify
16 EPA, in writing, of the name, address, and telephone number of
17 their designated Project Coordinator and Alternate Project
18 Coordinator responsible for supervising or overseeing the Work to
19 be performed under this Consent Decree and Monitoring Plan. The
20 Project Coordinator shall have primary responsibility for
21 implementation of the Work at the St. Paul Waterway Problem Area
22 under this Consent Decree and Monitoring Plan as provided in
23 Section VII above. Champion and DNR shall provide the name,
24 telephone number, and address of a project contact for EPA. The
25 Settling Defendants may change their Project Coordinator(s) or
26 Contacts by notifying EPA, in writing, at least ten (10) calendar
27 days prior to the change.

1 67. EPA shall designate a Remedial Project Manager
2 (RPM) who shall oversee the Work performed by Settling Defendants
3 pursuant to this Consent Decree and Monitoring Plan. In addition
4 to the RPM designated by EPA pursuant to paragraph 116 of this
5 Consent Decree, EPA may designate other representatives,
6 including its contractors and consultants, and persons from, or
7 working for, Ecology or the Puyallup Tribe, to observe and
8 monitor the progress of activities undertaken pursuant to this
9 Consent Decree. EPA's RPM shall have the authority lawfully
10 vested in a RPM and On-Scene Coordinator (OSC) by the National
11 Contingency Plan, 40 C.F.R. Part 300, as amended, and as provided
12 under Section XXIV of this Consent Decree.

13 68. To the maximum extent possible, except as
14 specifically provided in this Consent Decree, communications
15 between Settling Defendants and EPA concerning the implementation
16 of the Work under this Consent Decree shall be made between the
17 Settling Defendants' Project Coordinator and EPA's RPM. The
18 Settling Defendant's Project Coordinator and EPA's RPM are
19 authorized to make minor modifications to the requirements of
20 this Consent Decree (see paragraph 120 below).

21
22 XIV. FORCE MAJEURE

23 69. "Force Majeure," for purposes of this Consent
24 Decree is defined as any event arising from causes entirely
25 beyond the control of the Settling Defendants which Settling
26 Defendants could not avoid by the exercise of due diligence and
27 which delays or prevents the timely performance of any obligation
28 ST. PAUL WATERWAY CONSENT DECREE - Page 44

1 under this Consent Decree notwithstanding Settling Defendants'
2 best efforts to avoid the delay, including but not limited to
3 using best efforts to address any potential Force Majeure (i) as
4 it is occurring and (ii) following the potential Force Majeure
5 event, such that the delay is minimized to the greatest extent
6 possible. Force Majeure shall not include increased costs or
7 expenses in connection with the performance of the Work under the
8 Consent Decree or Monitoring Plan, changed financial
9 circumstances of Settling Defendants or nonattainment of the
10 performance standards set forth in Section VII of this Consent
11 Decree.

12 70. When circumstances or any event occurs or has
13 occurred which may delay the completion of any phase of the Work
14 or delay access to the St. Paul Waterway Problem Area or to any
15 property on which any part of the Work is to be performed,
16 whether or not caused by a Force Majeure event, the Settling
17 Defendants shall promptly (but no later than 48 hours) orally
18 notify EPA's RPM, or other EPA representative in his/her absence.
19 Within five (5) working days of the event which Settling
20 Defendants contend is responsible for the delay, Settling
21 Defendants shall notify EPA in writing of reason(s) for the
22 delay, the anticipated duration of such delay, the measures taken
23 and to be taken by Settling Defendants to prevent or minimize the
24 delay, the timetable for implementation of such measures, and a
25 statement as to whether, in the opinion of the Settling
26 Defendants, such event may cause or contribute to an endangerment
27 to public health, welfare or the environment. Failure to give

1 oral notice to EPA's Project Coordinator and to give written
2 explanation to EPA in a timely manner shall constitute a waiver
3 of any claim of Force Majeure.

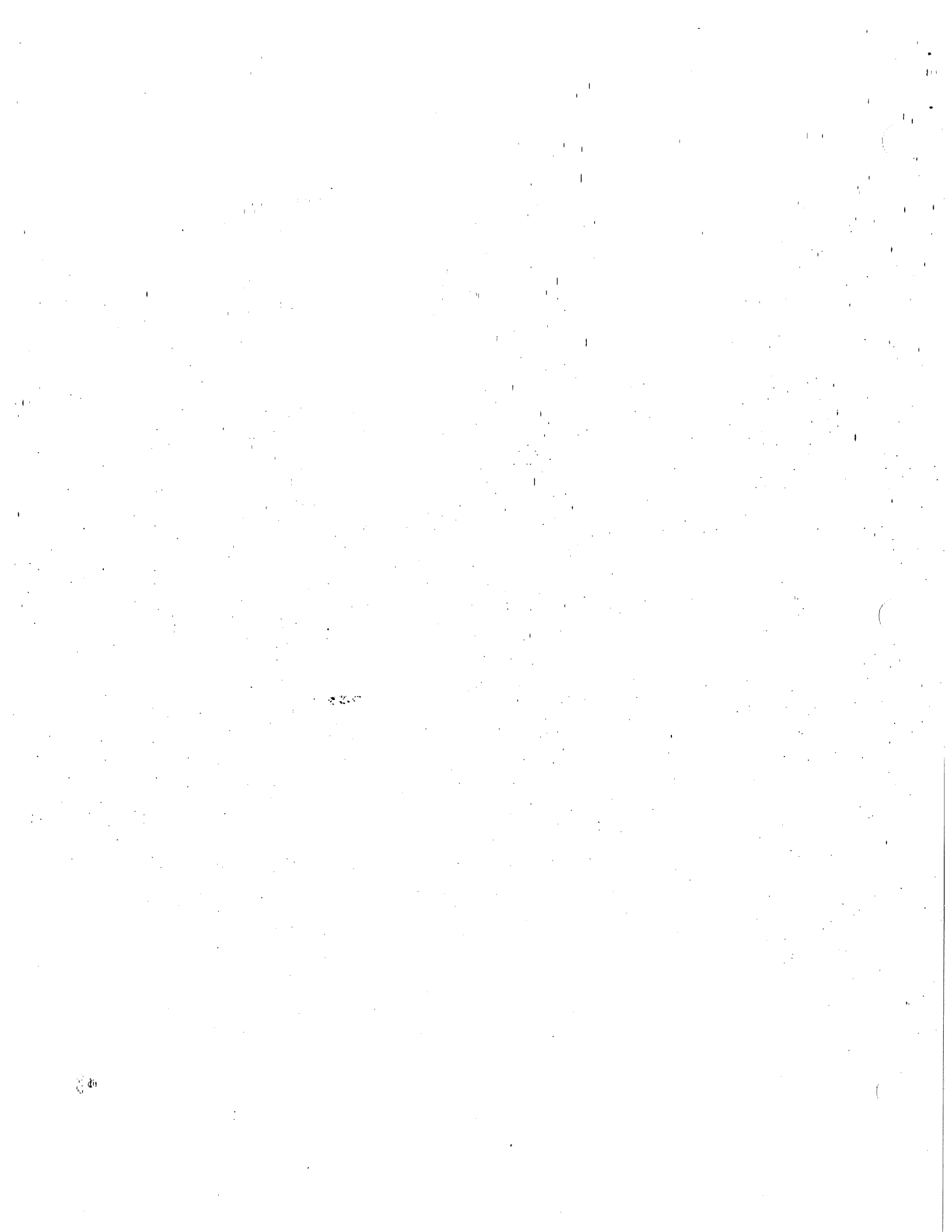
4 71. If EPA agrees that the delay or anticipated delay
5 is or was attributable to a Force Majeure event, the time for
6 performance of the obligations under this Consent Decree that are
7 directly affected by the Force Majeure event shall be extended by
8 agreement of the Settling Parties for a period of time to allow
9 the completion of the specific phase of Work and/or any
10 succeeding phase of the Work affected by such delay.

11 72. If EPA does not agree that the delay or
12 anticipated delay has been or will be a Force Majeure event, or
13 that the duration of the delay is or was warranted under the
14 circumstances, the Settling Parties shall resolve the dispute
15 according to Section XV hereafter. In any such proceeding,
16 Settling Defendant has the burden of demonstrating by a
17 preponderance of evidence that the delay or anticipated delay has
18 been or will be caused by a Force Majeure as a defense to
19 compliance with this Consent Decree.

20 21 XV. DISPUTE RESOLUTION

22 73. If the parties cannot resolve a disagreement
23 under this Consent Decree, EPA shall use the procedures set forth
24 in this Section and shall promptly make a determination or
25 certify issues to the court for resolution.

26 74. The Settling Parties shall attempt to resolve
27 expeditiously and informally any disagreements concerning



1 implementation of this Consent Decree or any Work required
2 thereunder. Informal negotiations between the parties to the
3 dispute may last for a period of up to fourteen (14) calendar
4 days from the date that written notice of the existence of the
5 dispute is served on all Settling Parties, unless it is extended
6 by written agreement between the Settling Parties.

7 75. In the event that any dispute arising under this
8 Consent Decree is not resolved informally within the fourteen
9 (14) day time period indicated in paragraph 74 above, the party
10 who gave the notice shall then within ten (10) days serve on the
11 Settling Parties a written statement of the issues in dispute,
12 the relevant facts upon which the dispute is based, and factual
13 data, analysis or opinion supporting its position, and all
14 supporting documentation on which such party relies (hereinafter
15 the "Statement of Position"). Opposing parties shall serve their
16 Statements of Position, including supporting documentation, no
17 later than ten (10) calendar days after receipt of the
18 complaining party's Statement of Position. In the event that
19 these ten-day time periods for exchange of Statements of Position
20 may cause a delay in the Work, they shall be shortened in
21 accordance with written notice by EPA.

22 76. An administrative record of any dispute under
23 this Section shall be maintained by EPA. At its option, EPA may
24 determine, which determination shall not be reviewable by a
25 court, that any dispute which relates to the selection, extent,
26 or adequacy of any aspect of any response actions is to be
27 resolved on an administrative record. For purposes of this

1 paragraph, the adequacy of any aspect of any response action
2 includes: (i) the adequacy or appropriateness of plans,
3 procedures to implement plans, or any other items requiring
4 approval by EPA under this Consent Decree; and (ii) the adequacy
5 of response actions performed pursuant to this Consent Decree.

6 The record shall include the written notification of such dispute
7 and the Statements of Positions and any other materials submitted
8 by the parties in support of their positions. The record shall
9 be available for review by all Settling Parties to this Consent
10 Decree.

11 77. Upon review of the administrative record, EPA
12 shall issue a final decision and order resolving the dispute
13 within fourteen (14) calendar days.

14 78. Any decision and order of EPA pursuant to the
15 preceding paragraph shall be binding unless a Notice of Judicial
16 Appeal is filed with this Court within ten (10) calendar days of
17 receipt of EPA' decision and order. In any event, judicial
18 review will be conducted on the administrative record, using an
19 arbitrary and capricious standard of review. The Settling
20 Defendants shall bear the burden of proof for demonstrating that
21 the decision is arbitrary and capricious. The filing of a
22 judicial appeal shall not stay the accrual of stipulated
23 penalties pursuant to Section XVI. After the date of termination
24 of this Consent Decree specified in Section XXXII hereof,
25 judicial review will be available only by instituting new
26 action(s) to the extent permitted by law, except for those
27 continuing obligations set forth in paragraph 125.

1 79. The invocation of the procedures stated in this
2 Section shall not extend or postpone the Settling Defendants'
3 obligations under this Consent Decree with respect to the
4 disputed issue unless and until EPA finds, or the Court orders,
5 otherwise.

6 80. In no event will the standards for performance of
7 the Work set forth in paragraph 46 of this Consent Decree be
8 subject to challenge by the Settling Defendants. Disputes on
9 whether the performance standards have been met or on
10 modifications to such performance standards proposed by EPA are
11 subject to dispute resolution under this Section.

12
13 XVI. STIPULATED PENALTIES

14 81. The Settling Defendants shall be jointly and
15 severally liable for stipulated penalties in the amounts set
16 forth in paragraph 87 for each violation of the requirements of
17 this Consent Decree unless EPA or a court determines that such
18 failure is excused under Section XIV ("Force Majeure").
19 Violations by the Settling Defendants shall include, but are not
20 limited to, failure to complete an activity under this Consent
21 Decree, or any matter under this Consent Decree in a manner
22 acceptable to EPA and within the specified reporting schedules,
23 established in and approved under this Consent Decree. Any
24 modifications of the time for performance shall be mutually
25 agreed to in writing pursuant to paragraph 68 or 120.

26 82. All penalties begin to accrue on the day that
27 complete performance is due or a violation occurs, and continue

1 to accrue through the final day of correction of the
2 noncompliance. Nothing herein shall prevent the simultaneous
3 accrual of separate penalties for separate violations of this
4 Consent Decree.

5 83. Following a determination by EPA that Settling
6 Defendants have failed to comply with any requirement of this
7 Consent Decree, EPA shall give Settling Defendants written
8 notification of the violation and describe the noncompliance.
9 EPA shall use best efforts to issue such notification within
10 thirty (30) days of its determination of a violation. This
11 notice shall also indicate the amount of penalties currently due,
12 and the rate of accrual for continuing violations.

13 84. All penalties owed under this Section shall be
14 payable within thirty (30) calendar days of receipt of the
15 notification of noncompliance, unless the Settling Defendants
16 invoke the dispute resolution procedures under Section XV.
17 Penalties shall accrue from the date of violation regardless of
18 whether EPA simultaneously notified the Settling Defendants of a
19 violation. Interest shall begin to accrue on the unpaid balance
20 at the end of the thirty day period pursuant to paragraph 89 of
21 this Section. Such penalties shall be paid by certified check to
22 the "Hazardous Substances Response Superfund," and shall contain
23 Settling Defendants' complete and correct address, the Site name,
24 and the civil action number. All checks to the "Hazardous
25 Substances Response Trust Fund" shall be mailed to U.S. EPA
26 Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251.

1 85. Neither the filing of a petition to resolve a
2 dispute nor the payment of penalties shall alter in any way the
3 Settling Defendants' obligation to fully perform the requirements
4 of this Consent Decree.

5 86. The Settling Defendants may dispute EPA's right
6 to the stated amount of penalties by invoking the dispute
7 resolution procedures under Section XV. Penalties shall accrue
8 but need not be paid during the dispute resolution period. If
9 the District Court becomes involved in the resolution of the
10 dispute, the period of dispute shall end upon the rendering of a
11 decision by the District Court regardless of whether any party
12 appeals such decision. If the Settling Defendants do not prevail
13 upon resolution, the United States has the right to collect all
14 penalties which accrue prior to and during the period of dispute.
15 In the event of an appeal by Settling Defendants, such penalties
16 shall be placed into an escrow account until a decision has been
17 rendered by the final court of appeal. If the Settling
18 Defendants prevail upon resolution, no penalties shall be payable
19 and the sums held in the escrow account shall be refunded to the
20 Settling Defendants.

21 87. The following stipulated penalties shall be
22 payable per violation per day for any noncompliance identified in
23 paragraph 81 above.

<u>Amount/Day</u>	<u>Period of Noncompliance</u>
\$1,500	1st through 30th day
\$5,000	30th through 60th day
\$10,000	60th day and beyond

1 88. No payments made under this Section shall be tax
2 deductible.

3 89. Pursuant to 31 U.S.C. § 3717, interest shall
4 accrue on any amounts overdue at a rate established by the
5 Department of Treasury for any period after the date of billing.
6 A handling charge will be assessed at the end of each thirty day
7 late period, and a six percent per annum penalty charge will be
8 assessed if the penalty is not paid within ninety (90) calendar
9 days of the due date.

10 90. If the Settling Defendants fail to pay stipulated
11 penalties, the United States may institute proceedings to collect
12 the penalties. Notwithstanding the stipulated penalties
13 provisions of this Section, the United States may elect to assess
14 civil penalties and/or bring an action in U.S. District Court
15 pursuant to Section 109 of CERCLA, as amended, or other
16 applicable law, to enforce the provisions of this Consent Decree.
17 Payment of stipulated penalties shall not preclude the United
18 States from electing to pursue any other remedies or sanctions to
19 enforce this Consent Decree, including seeking additional
20 penalties for civil or criminal contempt proceedings, and nothing
21 shall preclude the United States from seeking statutory penalties
22 against the Settling Defendants for violations of any statutory
23 or regulatory requirements.

XVII. REIMBURSEMENT

91. Settling Defendants shall, jointly and severally, pay three hundred fifty four thousand, five hundred thirty six dollars (\$354,536.00) plus any interest due, in reimbursement of Past Response Costs through September 30, 1989, within thirty (30) calendar days of the entry of this Consent Decree, to the "EPA Hazardous Substances Response Superfund." Interest, including prejudgment interest, shall accrue on any amount owed after thirty (30) days of the Settling Defendants' receipt of EPA's special notice and formal demand letter and shall continue to accrue on any unpaid balance following the date of entry of this Consent Decree. In addition, Settling Defendants shall, jointly and severally, pay sixty (60) percent of EPA's Past Response Costs, plus any interest due, incurred from September 30, 1989 through the date of entry of this Consent Decree and not inconsistent with the National Contingency Plan, within thirty (30) calendar days of receipt of EPA's demand letter and Financial Management Cost Summary, to the "EPA Hazardous Substances Response Superfund." Interest shall accrue on any amount owed after thirty days of the Settling Defendants' receipt of EPA's formal demand letter. Such amounts shall be sent to the U.S. EPA Superfund, P.O. Box 371003M, Pittsburgh, Pennsylvania 15251, payable to "EPA Hazardous Substances Response Superfund" and shall contain the Site name and civil action number. A copy of such check with an explanatory transmittal letter shall be sent to the Director of the Hazardous Waste Division, EPA, Region

1 10, the EPA RPM and the EPA Hearing Clerk, Office of Regional
2 Counsel, EPA, Region 10.

3 92. The payments made under paragraph 91 of this
4 Section are for reimbursement of EPA's Past Response Costs plus
5 interest, incurred through the date of entry of this Consent
6 Decree, claimed by the United States in this action. Nothing
7 herein shall be construed as limiting the rights of the United
8 States to seek any cost recovery from liable persons not party to
9 this Consent Decree.

10 93. Settling Defendants shall, jointly and severally,
11 reimburse the United States for all Oversight Response Costs and
12 Future Response Costs plus interest from the date of entry of
13 this Consent Decree not inconsistent with the National
14 Contingency Plan incurred by the United States and EPA. The
15 United States shall send Settling Defendants a demand for
16 payment, by certified mail return receipt requested, which shall
17 include an EPA Region 10 Financial Management Office Cost Summary
18 of all direct and indirect costs incurred by EPA and the United
19 States and their contractors, on an annual basis, with each
20 demand to be made as soon as practicable after the anniversary
21 date of the entry of this Consent Decree. Payments shall be made
22 in the manner described in paragraph 91 within 30 days of
23 Settling Defendants' receipt of each demand for payment.

24 94. Copies of check(s) paid pursuant to paragraph 93,
25 and any accompanying transmittal letter(s), shall be sent to the
26 United States and EPA as provided in paragraph 93.

1 95. Settling Defendants may contest payment of any
2 Past Response Costs incurred during the period September 30, 1989
3 through the effective date of this Consent Decree and Oversight
4 Response Costs or Future Response Costs incurred after entry of
5 this Consent Decree pursuant to paragraph 93 if they determine
6 that EPA has made an accounting error or if they allege that a
7 cost item that is included represents costs incurred for efforts
8 undertaken in a manner that was inconsistent with the NCP. Such
9 objection shall be made in writing within 30 days of receipt of
10 the accounting and must be sent to the United States pursuant to
11 Section XV. Any such objection shall specifically identify the
12 contested Oversight Response Costs or Future Response Costs and
13 the basis for objection. In the event of an objection, which
14 shall be resolved under the dispute resolution procedures of
15 Section XV, the Settling Defendants shall within the 30 day
16 period remit a certified or cashier's check for an amount
17 covering any non-contested Oversight Response Costs or Future
18 Response Costs to the United States in the manner described in
19 paragraphs 91 and 93. The dispute resolution procedures of
20 Section XV shall apply. If EPA prevails in the dispute, the
21 Settling Defendants shall pay the amount due plus interest and
22 applicable charges pursuant to paragraph 96.

23 96. In the event that the payments required by
24 paragraphs 91 or 93 are not timely made, Settling Defendants
25 shall pay interest on the unpaid balance at the rate established
26 by the Department of the Treasury pursuant to 31 U.S.C. § 3717
27 and 4 C.F.R. 102.13. Settling Defendants shall, jointly and
28 ST. PAUL WATERWAY CONSENT DECREE - Page 55

1 severally, further pay: (i) a handling charge of one percent, to
2 be assessed at the end of each thirty-day late period, and (ii) a
3 six (6) percent per annum penalty charge, to be assessed if
4 Settling Defendants have not paid in full within ninety (90) days
5 after the payment is due. Payments made under this paragraph
6 shall be in addition to such other remedies or sanctions
7 available to EPA and the United States by virtue of Settling
8 Defendants' failure to make timely payments under this Section.
9 If Oversight Response Costs are outstanding at the time the
10 United States plans to terminate this Consent Decree, the
11 Settling Defendants shall, within thirty (30) calendar days of
12 the submission of an itemized cost statement and supporting
13 documentation by the United States, and before termination of
14 this Consent Decree, pay such oversight costs.

15 97. The Past Response Costs set forth in this Section
16 are not inconsistent with the NCP.

17

18 XVIII. COVENANT NOT TO SUE

19 98. In consideration of actions which will be
20 performed and payments which will be made by the Settling
21 Defendants under the terms of this Consent Decree, and except as
22 otherwise specifically provided in this Decree, the United States
23 on behalf of EPA and the federal Natural Resource Trustees, and
24 the other Natural Resource Trustees, covenant not to sue the
25 Settling Defendants or its officers, directors, employees,
26 agents, successors, trustees, or assigns, for "Covered Matters."
27 These covenants not to sue shall take effect upon receipt by EPA

1 of the payments required by paragraph 91 of this Decree and upon
2 receipt by the Natural Resource Trustees of the payments required
3 under the Settlement Agreement on Natural Resource Damages
4 attached hereto as Exhibit C. With respect to future liability,
5 these covenants not to sue shall take effect upon the date of
6 issuance of the Certification of Completion by EPA under
7 paragraph 124. The covenant not to sue DNR for natural resource
8 damages in the St. Paul Waterway Problem Area shall take effect
9 upon: (i) completion of the administrative review and
10 identification of properties referred to in the Settlement
11 Agreement, and (ii) receipt of DNR's written commitment to make
12 available properties, that are acceptable to the Natural Resource
13 Trustees, for the habitat restoration project referred to in the
14 Settlement Agreement. "Covered Matters" means the following:

15 (A) Exclusively with respect to the St. Paul Waterway
16 Problem Area, liability for any and all civil claims
17 available to the United States on behalf of EPA and
18 the federal Natural Resource Trustees, and the other
19 Natural Resource Trustees, under Sections 106 and 107
20 of CERCLA, Section 7003 of RCRA, and Section 311 of
21 the Federal Water Pollution Control Act for:

22 (1) A release or threat of release of hazardous
23 substances that was remedied by Work described in
24 this Consent Decree and the Superfund Completion
25 Report.

26 (2) Work performed in accordance with this
27 Consent Decree and Monitoring Plan.

1 (3) Recovery of Past Response Costs, Oversight
2 Response Costs, and Future Response Costs
3 associated with contaminated sediments within the
4 St. Paul Waterway Problem Area.

5 (4) Damages for injury to, destruction of, or
6 loss of natural resources under federal, state,
7 and tribal trusteeship.

8 (B) With respect to Simpson and Champion in the other
9 Problem Areas described in the ROD, liability for any
10 and all civil claims available to the United States on
11 behalf of EPA under Sections 106 and 107 of CERCLA and
12 Section 7003 of RCRA for:

13 (1) Other sediment remedial actions.

14 (2) Past Response Costs, Oversight Response
15 Costs, and Future Response Costs associated with
16 contaminated sediments.

17 (C) Covered Matters under this paragraph do not
18 include the Middle Waterway Problem Area described in
19 the ROD.

20 99. (i) The covenants not to sue set forth above do
21 not pertain to any matters other than those expressly specified
22 to be "Covered Matters." In addition, the following are
23 specifically identified as matters that are not "Covered
24 Matters:"

25 (A) Criminal liability.
26
27

1 (B) Claims based on a failure of the Settling
2 Defendants to meet the requirements of this Consent
3 Decree.

4 (C) Liability for violations of applicable federal,
5 state, or tribal law or regulation by a Settling
6 Defendant in carrying out this Consent Decree.

7 (D) Liability arising from hazardous substances that
8 are removed by or at the direction of a Settling
9 Defendant from the St. Paul Waterway Problem Area or
10 the Site after the effective date of this Consent
11 Decree, where such removal is not authorized by this
12 Consent Decree.

13 (E) Liability, including but not limited to, claims
14 for Response Costs, under applicable federal, state,
15 or tribal law or regulation arising from any future
16 release or threat of release of hazardous substances
17 not described in the ROD and supporting documents or
18 as a "Covered Matter."

19 (F) Any matters for which the United States is owed
20 indemnification under Section XXII hereof.

21 (G) Oversight Response Costs and Future Response
22 Costs, if incurred and not reimbursed to the United
23 States under paragraph 93.

24 (H) Liability under applicable federal, state, or
25 tribal law or regulation for contaminated sediments in
26 the Middle Waterway Problem Area.

1 (I) Liability for unknown conditions as described in
2 paragraph 100 of this Consent Decree.

3 (J) Liability for damages for injury to, destruction
4 of, or loss of natural resources, including damages
5 with respect to petroleum product releases occurring
6 after July 1, 1990, and excluding damages with respect
7 to the St. Paul Waterway Problem Area.

8 (K) Liability for releases of petroleum products or
9 hazardous substances (not described in the ROD and
10 supporting documents or as a "Covered Matter") at the
11 St. Paul Waterway Problem Area after July 1, 1990,
12 pursuant to Section 311 of the Federal Water Pollution
13 Control Act, as amended by the Oil Pollution Act of
14 1990, P.L. No. 101-380, 104 STAT. 484, or any other
15 applicable provision of that Act.

16 (ii) Settling Defendants reserve their right to
17 assert defenses under CERCLA, including but not limited to, the
18 defense set forth in Section 107(b)(3) of CERCLA, to any of the
19 matters described in subparagraphs (A) through (K) above.

20
21 XIX. RESERVATION OF RIGHTS

22 100. The United States on behalf of EPA and the
23 federal Natural Resource Trustees, and the other Natural Resource
24 Trustees on their own behalf, reserve, and this Consent Decree is
25 without prejudice to, all rights against Settling Defendants with
26 respect to all matters not described as Covered Matters,
27 including additional response Work at the St. Paul Waterway

1 Problem Area or the Site which are not covered by the covenant
2 not to sue. EPA and the Natural Resource Trustees maintain all
3 rights without reservation with respect to DNR in all Problem
4 Areas other than the St. Paul Waterway Problem Area. If
5 previously unknown conditions or information are discovered, as
6 defined in subparagraphs (A) and (B) below, the United States
7 reserves the right to: (i) perform additional response Work
8 caused by a release from the St. Paul Waterway Problem Area or
9 the Site; (ii) institute proceedings in this action or in a new
10 action seeking to compel the Settling Defendants to perform any
11 additional response Work at the St. Paul Waterway Problem Area or
12 the Site; or (iii) institute proceedings in this action or in a
13 new action seeking to compel the Settling Defendants to reimburse
14 the United States on behalf of EPA for its response costs
15 relating to the St. Paul Waterway Problem Area or the Site.

16 (A) Previously unknown conditions means:

17 (1) Conditions at the St. Paul Waterway Problem
18 Area or the Site, previously unknown to the
19 United States, are discovered after the date of
20 this Consent Decree; or

21 (2) Information, including scientific or
22 technical information, data, facts, or documents
23 is received, in whole or in part, or new analyses
24 of information not contained in the record for
25 the initial remedy selection decision are
26 completed, after the effective date of this
27 Consent Decree.

1 (B) EPA and the Natural Resource Trustees reserve
2 their rights if either EPA or the Natural Resource
3 Trustees find, based on these previously unknown
4 conditions or information described in subparagraph
5 (A), together with site-specific and any other
6 relevant information, that:

7 (1) The response action associated with
8 contaminated sediments in the St. Paul Waterway
9 Problem Area implemented under the provisions of
10 this Consent Decree is no longer protective of
11 human health or the environment, or

12 (2) A Settling Defendant is potentially liable
13 under Sections 106 or 107 of CERCLA with respect
14 to a release or threat of release of hazardous
15 substances at the Site resulting from:

16 (a) The acts or failure to act of that
17 Settling Defendant, or

18 (b) A facility or vessel owned or operated
19 by that Settling Defendant which is located
20 outside of the St. Paul Waterway Problem
21 Area, or

22 (c) Transportation or arrangement for
23 transport by that Settling Defendant for
24 disposal or treatment of such hazardous
25 substances.

26 (C) Settling Defendants reserve their right to assert
27 defenses under CERCLA, including but not limited to

1 the defenses set forth in Section 107(b)(3) of CERCLA,
2 to claims or actions brought under this paragraph.

3 101. If Settling Defendants fail to meet the
4 requirements of this Consent Decree, EPA shall provide written
5 notice to the Settling Defendants of such failure. Consistent
6 with this Consent Decree, EPA, independently or in conjunction
7 with the Natural Resource Trustees, may perform, or may require
8 the Settling Defendants to perform, any or all portions of Work
9 necessary to correct such failure. EPA reserves its rights
10 under Sections XVI through XX of this Decree to assess stipulated
11 penalties. EPA and the Puyallup Tribe reserve their rights to
12 seek recovery of costs incurred after the entry of the Consent
13 Decree that result from failure to meet the requirements of the
14 Consent Decree and that: (1) relate to any portion of the Work
15 funded or performed by EPA or the Puyallup Tribe; or (2) are
16 incurred by the United States or the Puyallup Tribe as a result
17 of having to seek judicial assistance to remedy conditions at or
18 adjacent to the St. Paul Waterway Problem Area or the Site. In
19 any proceeding for costs under this Decree, the Settling
20 Defendants shall have the burden of proving that costs claimed by
21 EPA and/or the Puyallup Tribe were for Work inconsistent with or
22 beyond the scope of this Consent Decree or were inconsistent with
23 the NCP.

24 102. Nothing in this Consent Decree shall constitute
25 or be construed as a release or a covenant not to sue regarding
26 any claim or cause of action against any person, firm, trust,
27 joint venture, partnership, corporation, or other entity not a

1 signatory to this Consent Decree for any liability it may have
2 arising out of or relating to the St. Paul Waterway Problem Area
3 or the Site. The United States, either on behalf of EPA or the
4 federal Natural Resource Trustees, or both, and the other Natural
5 Resource Trustees on their own behalf, expressly reserve the
6 right to sue any person other than the Settling Defendants, in
7 connection with the St. Paul Waterway Problem Area or any other
8 area at the Site.

9
10 XX. COVENANT BY SETTLING DEFENDANTS; ASSIGNMENT OF CLAIMS

11 103. Settling Defendants hereby covenant not to sue
12 and agree not to assert any claims or causes of action against
13 the United States, EPA, or the Natural Resource Trustees, for any
14 claims for costs, damages, or attorneys fees related to or
15 arising from "Covered Matters" including but not limited to any
16 direct or indirect claim for reimbursement from the Hazardous
17 Substance Superfund (established pursuant to the Internal Revenue
18 Code, 26 U.S.C. § 9507) pursuant to Sections 106(b)(2), 111, or
19 112, 42 U.S.C. §§ 9606(b)(2), 9611, or 9612, or NCP section
20 300.700(d) or (e). Nothing in this Consent Decree shall be
21 deemed to constitute preauthorization of a claim within the
22 meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or NCP
23 section 300.700(d).

24
25 XXI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

26 104. Nothing in this Consent Decree shall be
27 construed to create any rights in, or grant any cause of action

1 to, any person not a party to this Consent Decree. Each of the
2 Settling Parties expressly reserves any and all rights, including
3 any right to contribution, defenses, claims, demands, and causes
4 of action which each party may have with respect to any matter,
5 transaction, or occurrence relating in any way to the St. Paul
6 Waterway Problem Area or the Site against any person not a party
7 hereto. In the event the United States and the Puyallup Tribe do
8 not recover all of their Past Response Costs, Oversight Response
9 Costs, and Future Response Costs related to the St. Paul Waterway
10 Problem Area or the Site, the United States and the Puyallup
11 Tribe shall have a first right of recovery against any non-
12 settling parties as provided in Section 113(f)(3)(C) of CERCLA.
13 Nothing in this Consent Decree shall limit the right of the
14 Settling Defendants to assert claims for contribution at any time
15 against non-settling parties.

16 105. With regard to claims for contribution against
17 Settling Defendants for matters addressed in this Consent Decree,
18 the parties hereto agree that the Settling Defendants are
19 entitled as of the effective date of this Consent Decree to such
20 protection from contribution actions or claims as provided in
21 CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2). "Matters addressed"
22 in this Consent Decree means:

23 (A) The sediment remedial action in and the natural
24 resource damages with respect to the St. Paul Waterway
25 Problem Area.

26 (B) Work performed in accordance with this Consent
27 Decree and Monitoring Plan.

1 (C) EPA's and the Natural Resource Trustees' Past
2 Response Costs and Oversight Response Costs that are
3 reimbursed by the Settling Defendants.

4 (D) The Future Response Costs of EPA or the Natural
5 Resource Trustees, if expended by them and reimbursed
6 by the Settling Defendants.

7 106. The Settling Defendants agree that with respect
8 to any suit or claim for contribution brought by or against them
9 for matters related to this Consent Decree they will notify the
10 representatives of EPA, the United States, and the other Natural
11 Resource Trustees, within 30 days of the initiation of service of
12 such suit or claim upon them.

13 107. In any subsequent administrative or judicial
14 proceeding initiated either by the United States or by the other
15 Natural Resource Trustees, or both, for injunctive relief,
16 recovery of response costs, or other appropriate relief relating
17 to the St. Paul Waterway Problem Area or any other area within
18 the Site, Settling Defendants shall not assert, and may not
19 maintain, any defense or claim based upon the principles of
20 waiver or claim-splitting, or based upon any contention that the
21 claims raised by the United States or the other Natural Resource
22 Trustees in the subsequent proceeding were or should have been
23 brought in the instant case; provided, that nothing in this
24 paragraph affects the enforceability of the covenants not to sue
25 set forth in Section XVIII. The terms of this Consent Decree
26 and the fact of entry of this Decree do not constitute claim-
27 splitting by any party.

1 XXII. INDEMNIFICATION; OTHER CLAIMS

2 108. The United States does not assume any liability
3 by entering into this Agreement or by virtue of any designation
4 of Settling Defendants as EPA's authorized representatives under
5 Section 104(e) of CERCLA. Simpson and Champion agree to
6 indemnify and save and hold harmless the United States, EPA, and
7 the Natural Resource Trustees, and/or their agents, employees and
8 representatives for or from any and all claims or causes of
9 action arising from acts or omissions of Simpson and Champion
10 and/or their officers, employees, agents, contractors,
11 subcontractors, representatives, and any persons acting on their
12 behalf or under their control, in carrying out activities
13 pursuant to this Consent Decree, including any claims arising
14 from any designation of Simpson and Champion as EPA's authorized
15 representatives under Section 104(e) of CERCLA. The United
16 States and the other Natural Resource Trustees shall not be held
17 out as a party to any contract entered into by or on behalf of
18 Settling Defendants in carrying out activities pursuant to this
19 Consent Decree. Neither Settling Defendants nor any such
20 contractor shall be considered an agent of the United States or
21 the other Natural Resource Trustees. EPA shall notify Settling
22 Defendants of any such claims or actions after receiving notice
23 that such a claim or action is anticipated or has been filed.

24 109. Simpson and Champion waive, and shall indemnify
25 and hold harmless the United States and the other Natural
26 Resource Trustees with respect to any claims for damages or
27 reimbursement from the United States or the other Natural

1 Resource Trustees, or for set-off of any payments made or to be
2 made to the United States or the other Natural Resource Trustees,
3 arising from or on account of any contract, agreement, or
4 arrangement between any one or more of Settling Defendants and
5 any person for performance of Work relating to the St. Paul
6 Waterway Problem Area, including claims on account of
7 construction delays. Nothing in this Consent Decree shall
8 constitute or be construed as a release from any claim, cause of
9 action or demand in law or equity against any person, firm,
10 partnership, corporation, or state or local government entity not
11 a signatory to this Consent Decree for any liability it may have
12 arising out of or relating in any way to the generation, storage,
13 treatment, handling, transportation, release, or disposal of any
14 hazardous substances, hazardous wastes, pollutants, or
15 contaminants found at, taken to, or taken from, the St. Paul
16 Waterway Problem Area or any other area within the Site.

17 110. EPA and the Natural Resource Trustees are not to
18 be construed as a party to, and do not assume any liability for,
19 any contract entered into by the Settling Defendants in carrying
20 out the activities under this Consent Decree. The proper
21 completion of the Work under this Consent Decree is solely the
22 responsibility of the Settling Defendants.

23
24 XXIII. INSURANCE/FINANCIAL RESPONSIBILITY

25 111. Simpson and Champion shall purchase and maintain
26 an insurance policy in an amount reasonably acceptable to the
27 United States, which shall protect the United States and the

1 public against any and all liability arising out of Settling
2 Defendants' and their contractors and other agents' acts or
3 omissions in performance of the Work under this Consent Decree
4 and Monitoring Plan. Prior to the entry of this Consent Decree,
5 Settling Defendants shall provide EPA with a certificate of
6 insurance and a copy of the insurance policy for approval by the
7 United States.

8
9 XXIV. ENDANGERMENT

10 112. In the event EPA determines or concurs in a
11 determination by another local, state, tribal or federal agency
12 that any activities pertaining to implementation of this Consent
13 Decree, or any other circumstances or activities at the St. Paul
14 Waterway Problem Area or surrounding Site, which causes or
15 threatens an unpermitted release of a hazardous substance(s), or
16 which may present an immediate threat or imminent and substantial
17 endangerment to the public health or welfare or the environment,
18 the EPA may order the Settling Defendants to stop further
19 implementation of this Consent Decree for such period of time as
20 needed to abate the danger and/or immediately undertake all
21 appropriate action to prevent, abate, or minimize such release or
22 endangerment. If the Settling Defendants object to any order by
23 the RPM, they may petition the Court to stay or set aside such
24 order. The filing of such a petition shall not operate to stay
25 the effectiveness of such order, nor shall it in any way operate
26 to preclude EPA from taking response actions, or from seeking to
7 enforce such order. During any stoppage of Work under this

1 Section, the Settling Defendants' obligations with respect to the
2 Work ordered to be stopped shall be suspended and the time
3 periods for performance of that Work, as well as the time period
4 for any other Work dependent upon the Work which stopped, shall
5 be extended, for such period of time as EPA determines is
6 reasonable under the circumstances, in no event less than the
7 time of the stoppage.

8 113. In the event of any action or occurrence during
9 the performance of the Work under this Consent Decree or
10 Monitoring Plan which causes or threatens a release of a
11 hazardous substance(s), which may threaten the integrity of the
12 sediment remedial action or affect the biological populations, or
13 which may present an immediate threat to public health, welfare,
14 or the environment, the Settling Defendants shall immediately
15 take all appropriate action to prevent, abate, or minimize such
16 release or endangerment, and shall immediately notify the EPA
17 RPM, or if unavailable, the EPA Emergency Response and
18 Investigations Section, Superfund Branch, EPA Region 10.

19 Settling Defendants shall take such action in accordance with all
20 applicable provisions of the Health and Safety and Contingency
21 Plans developed pursuant to the Monitoring Plan. In addition,
22 Settling Defendants agree to prohibit any and all activities that
23 will or may potentially threaten or impair the integrity of the
24 sediment remedial action for the St. Paul Waterway Problem Area,
25 or that will or may potentially impair the health of or recovery
26 of the biological populations in the St. Paul Waterway Problem
27 Area.

1 114. In the event that Settling Defendants fail to
2 take appropriate response action as required by this Section, and
3 EPA takes such action instead, Settling Defendants shall
4 reimburse EPA all costs of the response action not inconsistent
5 with the NCP. Payment of such costs or response shall be made in
6 the manner described in paragraph 93 of Section XVII, as
7 applicable, within thirty (30) days of Settling Defendants'
8 receipt of demand for payment and a Region 10 Financial
9 Management Office Cost Summary of all of the direct and indirect
10 costs incurred.

11 115. Any disagreements under this Section XXIV shall
12 be resolved through the dispute resolution procedures under
13 Section XV. Nothing in the preceding paragraphs 112, 113, and
14 114 shall be deemed to limit any authority of EPA, the United
15 States, or this Court to take, direct, or order all appropriate
16 action to protect human health and the environment or to prevent,
17 abate, or minimize an actual or threatened unpermitted release of
18 hazardous substance(s) at, or from the St. Paul Waterway Problem
19 Area or any other area within the Site.

1 XXV. NOTICES

2 116. Whenever, under the terms of this Consent Decree,
3 notice is required to be given, or a report or other document is
4 required to be forwarded by one party to another, or service of
5 any papers or process is necessitated by the dispute resolution
6 provisions of Section XV hereof, such correspondence shall be
7 directed to the individuals at the addresses specified below.
8 Inadvertent failure to provide multiple copies to a party shall
9 not be considered noncompliance with this Consent Decree.

10
11 As to the United States or EPA:

12 Four copies to:

13 Lori Cohen, Remedial Project Manager
14 Superfund Branch (HW-113) *
15 U.S. Environmental Protection Agency
16 Region 10
17 1200 Sixth Avenue
18 Seattle, Washington 98101

19 One copy to:

20 Allan Bakalian, Assistant Regional Counsel
21 Office of Regional Counsel
22 U.S. Environmental Protection Agency
23 Region 10
24 1200 Sixth Avenue
25 Seattle, Washington 98101

26 One copy to:

27 Assistant Attorney General
28 Environment and Natural Resources Division
U.S. Department of Justice
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(DOJ Reference No. 90-11-3-363)

1 As to the Settling Defendants:

2 David McEntee
3 Environmental Manager
4 Simpson Tacoma Kraft Company
5 P.O. Box 2133
6 Portland Avenue
7 Tacoma, Washington 98401

8 Edward J. Reeve
9 Senior Counsel
10 Simpson Tacoma Kraft Company
11 1201 Third Avenue
12 Seattle, Washington

13 Kenneth S. Weiner
14 Preston Thorgrimson Shidler Gates & Ellis
15 5400 Columbia Center
16 Seattle, Washington 98104

17 James Carraway
18 Senior Manager, Special Projects
19 Environmental Affairs
20 Champion International Corporation
21 One Champion Plaza
22 Stamford, CT 06921

23 Ann J. Morgan
24 Manager, Division of Aquatic Lands
25 Washington Department of Natural Resources
26 John Cherberg Building
27 MS: QW-21
28 Olympia, Washington 98504

Christa L. Thompson
Office of the Attorney General
7th Floor
Highway License Building
Olympia, WA 98504

21 As to the Consulted Agencies, one copy each to:

22 Simpson Tacoma Kraft Mill Project Manager
23 Department of Ecology
24 Hazardous Waste Investigations and Cleanup
25 Program
26 Mail Stop PV-11
27 Olympia, Washington 98504-8711

1 Bill Sullivan
2 Environmental Department
3 Puyallup Tribe of Indians
4 2002 East 28th Street
5 Tacoma, Washington 98404

6 Morgan Bradley
7 Muckleshoot Indian Tribe
8 39015 - 172nd Avenue S.E.
9 Auburn, Washington 98002

10 Thom Hooper
11 Washington Department of Fisheries
12 115 General Administration Building
13 Olympia, Washington 98504

14 Tom Mumford
15 Washington Department of Natural Resources
16 Division of Aquatic Lands
17 900 - 47th Avenue N.E.
18 Olympia, Washington 98506

19 John Carleton
20 Washington Department of Wildlife
21 600 Capital Way N.
22 Olympia, Washington 98501-1091

23 Don Kane
24 United States Fish & Wildlife Services
25 Division of Ecological Services
26 2625 Parkmont Lane S.W., Building B-3
27 Olympia, Washington 98502

28 Chris Mebane
Coastal Resources Coordinator
NOAA
c/o EPA Region 10 (HW-113)
1200 Sixth Avenue
Seattle, Washington 98101

Charles S. Polityka
Regional Environmental Office
Department of Interior
1002 N.E. Holladay - Suite 354
Portland, Oregon 97232-4181

Ron Eggers
Bureau of Indian Affairs
Portland Area Office
P.O. Box 3785
Portland, Oregon 97208

1 Fred Gardner
2 Department of Ecology-Rowesix
3 4224 6th Avenue S.E.
4 Lacey, Washington 98503

5 Richard Du Bey
6 Special Environmental Counsel to the
7 Puyallup Tribe of Indians
8 3110 Bank of California Center
9 Seattle, WA 98164

10 XXVI. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

11 117. The United States and Settling Defendants agree
12 that Work required under this Consent Decree is consistent with
13 the provisions of the NCP pursuant to 42 U.S.C. § 9605.

14 XXVII. COMPLIANCE WITH LAWS

15 118. All actions carried out by the Settling
16 Defendants pursuant to this Consent Decree shall be done in
17 accordance with all applicable or relevant and appropriate
18 requirements under federal, state, and tribal, statutes, rules,
19 regulations and ordinances as required by Section 121 of CERCLA,
20 42 U.S.C. § 9601, and the National Contingency Plan, 40 C.F.R.
21 Part 300, as amended.

22 XXVIII. RESPONSE AUTHORITY

23 119. Except as provided in paragraph 98 ("covenant not
24 to sue"), nothing in this Consent Decree shall be deemed to limit
25 the response authority of EPA under 42 U.S.C. §§ 9604 and 9606,
26 or to alter the applicable legal principles governing the
27 judicial review of EPA's Record of Decision concerning remedial
28 action at the St. Paul Waterway Problem Area or the Site.

1 XXIX. MODIFICATION

2 120. (i) No modification shall be made to the text of
3 this Consent Decree without written notification to and written
4 approval of the Settling Parties and the Court. The notification
5 required by this paragraph shall set forth the nature of and
6 reasons for the requested modification. No oral modification of
7 the text of this Consent Decree shall be effective. Nothing in
8 this paragraph shall require the Settling Parties to amend the
9 text of this Consent Decree in order to make mutually agreed upon
10 revisions in the Exhibits herein, including the Monitoring Plan.

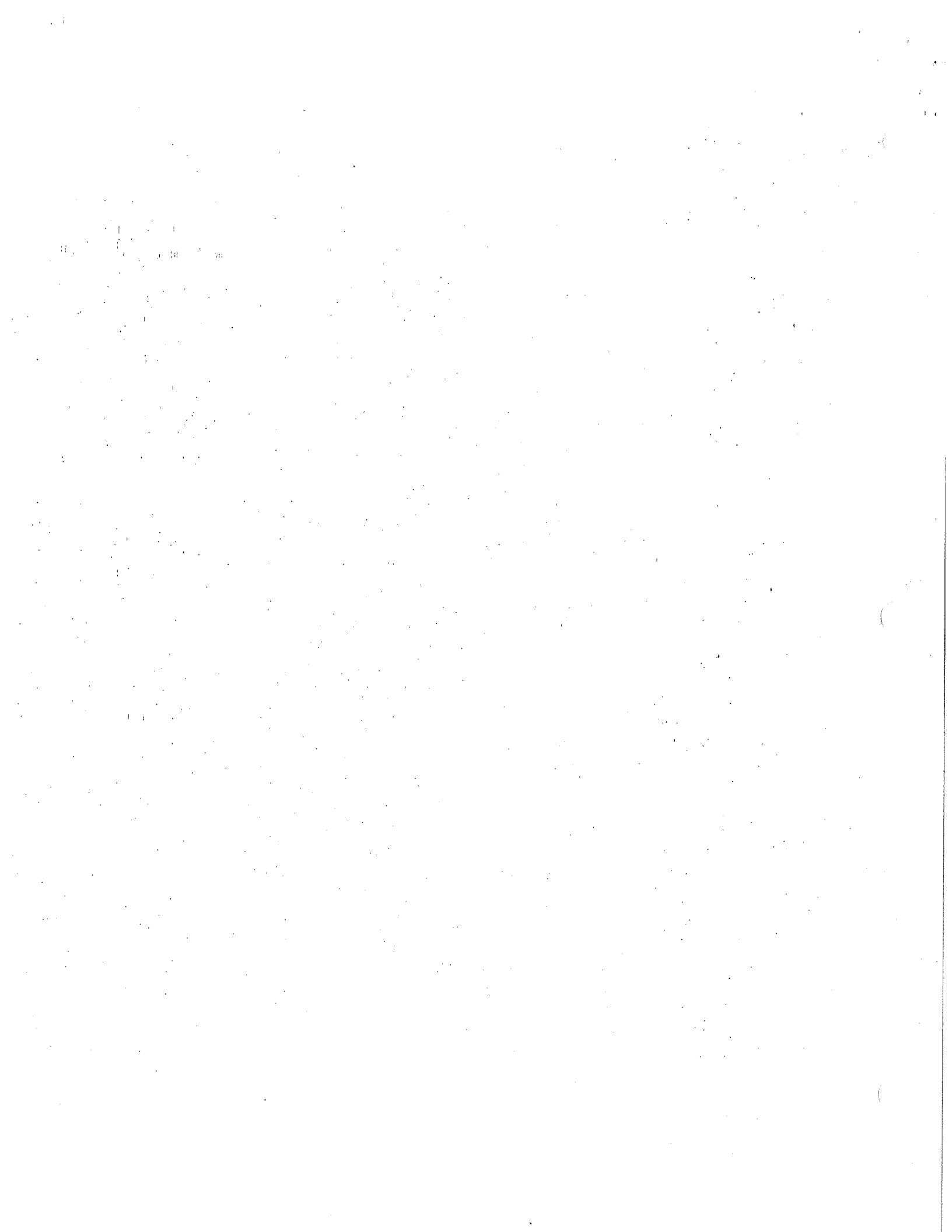
11 (ii) Minor modifications to the Exhibits herein that
12 do not materially alter the requirements of this Consent Decree
13 may be made with the written consent of the Settling Defendant's
14 Project Coordinator and EPA's RPM (see paragraph 68 above). Such
15 minor modifications include, for example, field decisions
16 relative to sample location, clarification of sampling techniques
17 to adapt to field conditions, reporting formats and schedules,
18 data evaluation techniques, and identification of parties to be
19 notified under paragraph 116. Minor modifications shall be
20 documented and ratified in writing and retained in the project
21 files of all parties. Minor modifications shall be documented in
22 the next report required under the Monitoring Plan.

23 (iii) If disagreements on modifications are not
24 within the scope of the contingency planning process, they shall
25 be resolved through the dispute resolution procedures in Section
26 XV above.

1 (iv) Nothing in this paragraph shall be deemed to
2 alter the Court's power to supervise or modify this Consent
3 Decree.
4

5 XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

6 121. The United States shall publish a notice of this
7 Consent Decree's availability for review and comment upon its
8 lodging with the United States District Court as a proposed
9 settlement in this matter pursuant to the provisions of 42 U.S.C.
10 § 9622(d)(2) and 28 C.F.R. § 50.7. The United States will
11 provide persons who are not parties to the proposed settlement
12 with the opportunity to file written comments during at least a
13 thirty (30) calendar day period following such notice. The
14 United States will file with the Court a copy of any comments
15 received and the response of United States to such comments.
16 After the close of the public comment period, the United States
17 reserves the right after review of such comments to withdraw or
18 withhold its consent to the Consent Decree if such comments
19 disclose facts or considerations which indicate that the proposed
20 settlement is inappropriate, improper, or inadequate. Settling
21 Defendants consent to the entry of this Consent Decree without
22 further notice, but reserve their right to withdraw or withhold
23 consent if revisions to the Consent Decree are made after the
24 close of the public comment period.
25
26
27



1 XXXI. COMMUNITY RELATIONS

2 122. This section sets forth an agreement between EPA,
3 Simpson, and Champion on providing information to the public on
4 the progress of the Work under this Consent Decree and on
5 Superfund activities at the St. Paul Waterway. The intent of
6 this section is for EPA, Simpson, and Champion to coordinate
7 these community relations activities. Other than as provided in
8 this Section, EPA, Simpson, and Champion are not limited in how
9 they respond to public inquiries on these matters.

10 (A) EPA shall be the lead agency for community
11 relations activities required by law, regulation, or
12 the Community Relations Plan for the Site. EPA shall
13 make final determinations on the text of any notices
14 or documents required by law, regulation, or the
15 Community Relations Plan (consistent with Section XII
16 regarding the availability of confidential and draft
17 material).

18 (B) EPA shall notify and invite Simpson and Champion
19 to participate in EPA's community relations activities
20 directed to the St. Paul Waterway Problem Area.
21 Simpson and Champion shall be provided the opportunity
22 to review draft fact sheets, press releases, and other
23 public notices. Simpson and Champion may also
24 participate in public meetings that are held or
25 sponsored by EPA to explain activities at or
26 concerning the St. Paul Waterway Problem Area. EPA
27 shall make final determinations on the text and

1 distribution of any of its community relations
2 documents.

3 (C) Simpson or Champion shall notify and invite EPA
4 to participate in their community relations activities
5 directed to the St. Paul Waterway Problem Area.
6 Simpson or Champion shall provide EPA the opportunity
7 to review draft fact sheets, press releases, and other
8 public notices. EPA may participate in public
9 meetings that are held or sponsored by Simpson or
10 Champion that concern the St. Paul Waterway Problem
11 Area. Any communications or notices issued by
12 Simpson or Champion independent of EPA's community
13 relations activities at the St. Paul Waterway Problem
14 Area shall be presented as separate and independent of
15 EPA's community relations activities.

16 (D) EPA's RPM and the Project Coordinator shall be
17 the contacts for coordination under this Section.
18

19 XXXII. EFFECTIVE AND TERMINATION DATES

20 123. Effective date. The effective date of this
21 Consent Decree shall be the date upon which it is entered by the
22 Court, except as otherwise provided herein.

23 124. Certification of Completion. The Settling
24 Defendants shall submit to EPA a Notice of Completion and a final
25 report called a Superfund Completion Report no later than thirty
26 (30) days after the date of the Regional Administrator's
27 signature on this Consent Decree. The final report must

1 summarize the Work performed and the performance standards
2 achieved and shall include or reference any supporting
3 documentation. Based upon its review of this report, the
4 supporting documentation, and the remedial activities conducted
5 at the St. Paul Waterway Problem Area, EPA will issue a
6 Certification of Completion for the St. Paul Waterway Problem
7 Area if the sediment remedial action has been satisfactorily
8 completed and has achieved standards of performance required
9 under this Consent Decree. The United States will not lodge this
10 Consent Decree until EPA has issued the Certification of
11 Completion.

12 125. Termination of Consent Decree. After EPA
13 determines that compliance with Section VII ("Performance of the
14 Work") is no longer required in order to assure that the sediment
15 remedial action remains protective of human health and the
16 environment, this Consent Decree shall be terminated upon motion
17 of any Settling Party and Order of this Court. Termination of
18 this Consent Decree shall not affect the "Covenant Not to Sue" in
19 Section XVIII, the "Reservation of Rights" in Section XIX, and
20 the "Effect of Settlement; Contribution Protection" in Section
21 XXI.

22
23 XXXIII. RETENTION OF JURISDICTION

24 126. This Court shall retain jurisdiction over this
25 matter for the purpose of enabling any of the Settling Parties to
26 apply to the Court at any time for such further order, direction,
27 and relief as may be necessary or appropriate for the

1 interpretation, construction, implementation, or modification of
2 this Consent Decree, or to effectuate or enforce compliance with
3 its terms, or to resolve disputes in accordance with Section XV
4 hereof.

5
6 XXXIV. SIGNATORIES

7 127. The undersigned representative of each Settling
8 Defendant to this Consent Decree, the Department of Justice, the
9 Environmental Protection Agency, and each of the Natural Resource
10 Trustees, certifies that he or she is fully authorized to enter
11 into the terms and conditions of this Consent Decree and to
12 execute and legally bind such party to this document.

13 128. Each Settling Defendant shall identify, on the
14 attached signature page, the name and address of an agency who is
15 authorized to accept service of process by mail on behalf of that
16 party with respect to all matters arising under or relating to
17 this Consent Decree. Settling Defendants hereby agree to accept
18 service in that manner and to waive the formal service
19 requirements set forth in Rule 4 of the Federal Rules of Civil
20 Procedure, including service of summons, any applicable local
21 rules of this Court.

22 SO ORDERED THIS _____ DAY OF _____, 1990.

23
24 _____
25 United States District Judge
26
27

1 THE UNDERSIGNED SETTLING PARTIES enter into this
2 Consent Decree in the matter of United States v. Simpson Tacoma
3 Kraft Company, et al., relating to the St. Paul Waterway Problem
4 Area of the Commencement Bay Nearshore/Tideflats Superfund Site.

5 FOR THE UNITED STATES OF AMERICA

6 By: *Russell Stewart* Dated: 6-5-91

7 Assistant Attorney General
8 Environment and Natural Resources
9 Division
10 U.S. Department of Justice
11 Washington, D.C. 20530

11 By: *Kalyn Cherie Free* Dated: May 1, 1991

12 Kalyn Cherie Free, Thomas W. Swegle
13 Nancy Flickinger
14 Attorney
15 Environment and Natural Resources
16 Division
17 U.S. Department of Justice
18 Washington, D.C. 20536

16 By: *Susan L. Barnes* Dated: 6/13/91

17 Assistant United States Attorney
18 3600 Seafirst Fifth Avenue Plaza
19 800 Fifth Avenue
20 Seattle, Washington 98104

20 By: *Thomas J. Durand* Dated: September 27, 1990

21 Regional Administrator
22 EPA, Region 10
23 Seattle, Washington 98101

23 By: *Joe Gold* Dated: September 27, 1990

24 for
25 Allan Bakalian
26 Assistant Regional Counsel
27 EPA, Region 10
28 Seattle, Washington 98101

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: Raymond B. Ludwiszewski

Dated: 3/7

Raymond B. Ludwiszewski
Acting Assistant Administrator
Office of Enforcement
Environmental Protection Agency
Washington, D.C.

1 SIMPSON TACOMA KRAFT COMPANY

2
3 By: *G. T. Roach*
4 Vice President and
5 Chief Financial Officer

Dated: September 27, 1990

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ST. PAUL WATERWAY CONSENT DECREE - Page 83

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

CHAMPION INTERNATIONAL CORPORATION

By: 

Dated: 9/27/90

1 WASHINGTON DEPARTMENT OF NATURAL RESOURCES

2
3 By:

James A. Stearns

Dated:

Sept. 27, 1990

4
5
6 For matters arising under or relating to the Consent Decree, service may be
7 made on the Office of the Attorney General, Christa L. Thompson, Assistant
8 Attorney General, Natural Resources Division, Highways-Licenses Building,
9 M.S. PB-71 Olympia, WA 98504
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

1 THE WASHINGTON DEPARTMENT OF ECOLOGY

2 By: Carol L. Flukes

Dated: 1/9/91

4 By: Jay J. Manning
5 Jay J. Manning
6 Assistant Attorney General
State of Washington

Dated: 1/9/91

1 THE PUYALLUP TRIBE OF INDIANS

DSD 13 1990

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

By: Henry John

Dated: 9/27/90

1 THE MUCKLESHOOT INDIAN TRIBE

2
3 BY:

Virginia Cross

Dated:

3-28-91

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBITS

- Exhibit A Monitoring and Contingency Plan
- Exhibit B Record of Decision
- Exhibit C Settlement Agreement on Natural
Resource Damages
- Exhibit D Superfund Completion Report
- Exhibit E Cost Allocation Summary

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE);

ENVIRONMENTAL PROTECTION AGENCY REGION 10 AGREEMENT AND CONCURRENCE

The ENVIRONMENTAL PROTECTION AGENCY REGION 10, signatory to the St. Paul Waterway Consent Decree on September 27, 1990, hereby acknowledges and concurs with the following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree:

"(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.

(K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The Environmental Protection Agency Region 10 further agrees by executing this Agreement and Concurrence that the St. Paul Waterway Consent Decree, as revised and circulated to the parties on November 28, 1990, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by the Environmental Protection Agency.

This Agreement and Concurrence will be attached to the Environmental Protection Agency Region 10's previously executed signature page to the St. Paul Waterway Consent Decree.

ENVIRONMENTAL PROTECTION AGENCY

By: Dana A. Rasmussen
Dana A. Rasmussen
Regional Administrator

Dated: December 21, 1990

By: Allan B. Bakalian
Allan B. Bakalian
Assistant Regional Counsel

Dated: December 21, 1990

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTLING PARTIES AGREEMENT AND CONCURRENCE

The undersigned representative of the SIMPSON TACOMA KRAFT COMPANY, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

"(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.

(K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The undersigned representative further agrees by executing this Agreement and Concurrence that EPA's November 27, 1990, revised St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by such Settling Party.

This Agreement and Concurrence will be attached to the Settling Parties' previously executed signature pages to the St. Paul Waterway Consent Decree.

SIMPSON TACOMA KRAFT COMPANY

By: 

Dated: December 12, 1990

1990

UNITED STATES V. SIMPSON TACOMA KRAFT COMPANY, CHAMPION
INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL
RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTLING PARTIES
AGREEMENT AND CONCURRENCE

The undersigned representative of the PUYALLUP TRIBE OF INDIANS, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

"(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.

(K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The undersigned representative further agrees by executing this Agreement and Concurrence that EPA's November 27, 1990, revised St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by such Settling Party.

This Agreement and Concurrence will be attached to the Settling Parties' previously executed signature pages to the St. Paul Waterway Consent Decree.

PUYALLUP TRIBE OF INDIANS

BY: Henry John

Dated: 12/5/90

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTLING PARTIES AGREEMENT AND CONCURRENCE

The undersigned representative of the WASHINGTON DEPARTMENT OF NATURAL RESOURCES, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

"(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.

(K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The undersigned representative further agrees by executing this Agreement and Concurrence that EPA's November 27, 1990, revised St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by such Settling Party.

This Agreement and Concurrence will be attached to the Settling Parties' previously executed signature pages to the St. Paul Waterway Consent Decree.

WASHINGTON DEPARTMENT OF NATURAL RESOURCES

BY:

James A. Stearns

Dated:

Dec. 6, 1990

UNITED STATES v. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTling PARTIES AGREEMENT AND CONCURRENCE

The undersigned representative of the WASHINGTON DEPARTMENT OF ECOLOGY, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

"(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.

(K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The undersigned representative further agrees by executing this Agreement and Concurrence that EPA's November 27, 1990, revised St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by such Settling Party.

This Agreement and Concurrence will be attached to the Settling Parties' previously executed signature pages to the St. Paul Waterway Consent Decree.

WASHINGTON DEPARTMENT OF ECOLOGY

By: Carol L. Flesher

Dated: January 9, 1991

UNITED STATES V. SIMPSON TACOMA KRAFT COMPANY, CHAMPION INTERNATIONAL, AND WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES (ST. PAUL WATERWAY CONSENT DECREE); SETTLING PARTIES AGREEMENT AND CONCURRENCE

The undersigned representative of the CHAMPION INTERNATIONAL CORPORATION, a Settling Party to this action, hereby acknowledges and concurs with the Environmental Protection Agency's following modification and addition to Paragraph 99(J) and (K) on page 60 of the St. Paul Waterway Consent Decree previously executed by the undersigned Settling Party:

"(J) Liability for damages for injury to, destruction of, or loss of natural resources, including damages with respect to petroleum product releases occurring after July 1, 1990, and excluding damages with respect to the St. Paul Waterway Problem Area.

(K) Liability for releases of petroleum products or hazardous substances (not described in the ROD and supporting documents or as a "Covered Matter") at the St. Paul Waterway Problem Area after July 1, 1990, pursuant to Section 311 of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, P.L. No. 101-380, 104 STAT. 484, or any other applicable provision of that Act."

The undersigned representative further agrees by executing this Agreement and Concurrence that EPA's November 27, 1990, revised St. Paul Waterway Consent Decree, incorporating the above-referenced modification and addition, will supersede, for purposes of these revisions, the prior version of the Consent Decree executed by such Settling Party.

This Agreement and Concurrence will be attached to the Settling Parties' previously executed signature pages to the St. Paul Waterway Consent Decree.

CHAMPION INTERNATIONAL CORPORATION

By:

Jim Caraway

Dated:

1-15-91

